23/13

1953

File No. Misc. Suits Kanara

53

K

Examined

Legal DEPARTMENT

E BRANCH

Subject:— Miscellaneous suit-matters from Kanara District-

200 (E)

Misc Suits Kanara/53

File No.

Std. Scott. Slip 24-B

265

Y.P.P.—S 142—500z—5-39—R(a)2 Spl.—Govt. Pl. H. C. Bom. 3 a.

No.

Bombay, 2nd February 1953.

Subject :- First Appeal No.509/52 in C.S.No.6/51.
Shri Sode Vadiraj Math -VS- The Registrar
of Public Trusts for the Dist. N.Kanara.

To

The Charity Commissioner, Bombay,
Bank Of India Building, 4th Floor,
Flora Fountain, Fort, Bombay No.1.

Sir,

Ref:- Your letter No.284/53 dated 19th Jan. 1953.

I have the honour to forward, herewith, a copy of Memorandum of FIRST Appeal in the case noted above and to request the favour of your applying for the sanction of Government for the defence of the same and giving me such detailed instructions as you may deem necessary.

3. If any objection, under Rule 22, Order 41, Civil Procedure Code, against the decree of the lower Court is to be urged, the necessary sanction of Government for its filing may be obtained early, as it must be filed in the High Court within one month from the date of service of notice.

4. The District Government Pleader, who may have conducted the above case in the lower Court, may be asked to inform me the numbers of important exhibits which will have to be relied upon in support of the case on behalf of Government at the time of its hearing here.

5. A copy of the *Rojnama* as required by Government Resolution, Legal Department, No. 298, dated the 4th May 1911, and a certified copy of the notice given by plaintiff under section 80, Civil Procedure Code, may also be sent to me.

I have the honour to be,

Sir
Your faithfully,

Sd/- V. S. Desai.

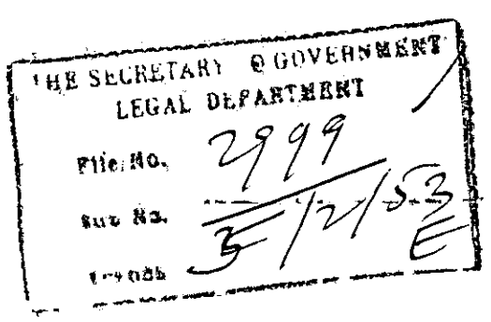
for Government Pleader, High Court.

No. 909
Bombay, 2nd February 1953.

Copy with a copy of Memorandum of First Appeal No. 509/52 forwarded with compliments to the Remembrancer of Legal Affairs, Bombay, for information and necessary action.

V. S. Desai

For Government Pleader, High Court.



Submitted

Sanction may be accorded for the defence of First Appeal No 509/52 in CS No 6/51 as requested by the G.P. H.C.

Sol(M)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

FIRST APPEAL NO.609 OF 1952.

District:North Kanara.

Shri Sode Vadiraj Math, Udpi Presided over by Shri Vishwottam Tirth Swami minor under the management of interim trustee P.S.Acharya. ... ... Appellant.

Versus.

The Registrar of Public Trusts for the District of North Kanara. ... ... Respon-dent.

Claim Rs. 130/- for all purposes.

The Plaintiff sued for a declaration that the Plaintiff's Math was govered by the Madras Hindu Religious Endowments Act and that therefore it could not be registered under the Bombay Trust Registration Act of 1935 and that the Defendants be directed to make necessary entries in the Registrar of Public Trust and to recover costs.

The Original Suit No. 6 of 1951 was decided by the District Judge of Kanara at Karwar who dismissed it with costs.

(1) That it is an error to hold under the circumstances of the present cases that the Math at Sode is liable to be registered under the Bombay Public Trust Registration Act.

(2) That the preamble to the Bombay Public Trust Registration Act, pre-supposes that there must be a Trust situated within the State of Bombay; the lower Court has failed to construe the said preamble properly.

(3) That it should have been held that unless there is a Trust situated ~~whtin~~ within the State of Bombay, the Act cannot be applied and that since the Udapi Math is situated within the State of Madras, it is beyond the jurisdiction of the Defendant--Registrar and consequently, the order of the Registrar is without jurisdiction.

(4) That it is an error, to regard, the existence of the propert within the State of Bombay, as the determining factor for the applicability of the Act in question.

Registration Act are misconstrued as there is no separate Trust as such at Sode or anywhere in the North Kanara District.

(6) That the Hindu Religious Endowments Board has under the Madras Religions Endowments Act jurisdiction over the Maths and its property situate even outside Madras State- a fact which is not at all considered by the Lower Court.

(7) That the scope and effect of the Public Trust Registration Act is misunderstood.

(8) That the Plaintiff is entitled to the declaration sought by him.

(9) That the decree of the Lower Court is contrary to law and equity.

Sd/-

Advocate for the Appellant.

D/-

7-7-

No. 2616/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 9th February 1960.

To

The Government Pleader,
High Court,
Bombay

Subject:- First appeal No. 600/60 in C.S. No. C/61.
Shri Sada Vadiraj Math Vs. The Registrar
of Public Trusts for the District N
Kanara.

Sir,

With reference to your endorsement No. 600 dated the 3rd February 1960 on the subject noted above, I have the honour to state that sanction is accorded for the defence of First Appeal No. 600/60 as requested by you.

Yours faithfully,

for Remembrancer of Legal Affairs.

Copy forwarded with compliments to:-
The Charity Commissioner, Bombay,
The Collector of Kanara,
The District Government Pleader, Kanara.

BM.
7.2.

Submitted after issue

File in Misc. Suits Kanara/53

Dhu
16/2

Subodh NB
16/2/53

Mrs Shastri

13/2

In the Court of the Civil Judge, S.Dn., Karwar.

Misc. No. of 1953.

The Union of India .. Petitioner.

Vs.

1. Digambar Laxman Natalkar, aged 37, goldsmith of Shahapur in Belgaum.
2. Yeshwant Narayah Revankar, aged 24, goldsmith, resident of Kathinkon in Karwar Taluka.
3. Manjula Kom Yeshwant, aged 20, household work, -Do-

.. Opponents.

Claim : Rs. 3500/-.

Respectfully submitted:

1. This application is submitted under C.38 Rule 8.C.P.C.

2. It appears that opponent No. 3 is the wife of opponent No. 2, and opponent No. 1 is their relative. They are goldsmiths.

3. On 6-4-1950, opponent No. 3 (who represented herself to be Manjula Yeshwant Naik of Shahapur Belgaum) and was proceeding towards Kolhapur from Belgaum side, was found in possession of 3 bars of gold and 6 bangles weighing in all 42 tolas, 2½ annas less one unji. These bars had certain marks thereon. These marks shoed that they were bars imported from Goa territory.

4. The gold was attached by the police for an offence under section 61(B) of the Bombay District Police Act. A charge-sheet was sent up on 13-10-1950, to the court of the F.C. Magistrate of Radhanagar in Kolhapur District.

5. On hearing of the detection of the offence and attachment of the above gold the Central Excise Authorities started enquiry and tried to get the gold delivered to them. Import of gold in India is prohibited under the Foreign Exchange Regulation 1947, and Notification No. 12 (11) FI/48, dated 25-8-1948, issued under section 8 of the Foreign Exchange Regulation Act read with section 19 of the Sea Customs Act 8 of 1878. It amounts to an offence under section 167(8) of the Sea Customs Act. Therefore attempt was made to get delivery of the gold from the Court under sec. 180 of the Sea Customs Act. This section lays down that when things liable to ....

to confiecation under the Sea Customs Act are seized by any police officer on suspicion that they have been stolen, he may carry them to any police station or court at which a complaint connected with the stealing or receiving of such things has been made, and there detain such things until the dismissal of such complaint or the conclusion of the enquiry of trial. But in every such case the police officer seizing the things should send written notice of their seizure and detention to the nearest Custom House and immediately after the dismissal of the complaint he shall cause such things to be conveyed to and deposited at the nearest Custom house to be proceeded against according to law. This gold was liable to confiscation and the Central Excise Department was entitled to get delivery of this gold from the Court in the ordinary course after the disposal of the case.

6. The case against the opponent No. 3 was Cr. Case No. 56 of 1951 of the Court of Radhanagar. It was postponed from day to day and finally was order d to be withdrawn by the A.D.M.Kolhapur. There were 2 other similar cases of this type and after this disposal the gold was taken charge of by the Central Excise Department.
Realising that this gold also will similarly be attached or would be handed over to the Central Excise Department under section 180 of the Sea Customs Act, the persons behind opponent No.3 invented a novel procedure to get the gold attached, through the Karwar Civil Judge's Court. On 20-11-1951, opponent No.1 filed O.S. suit No.240-1951, against opponents Nos. 2 and 3. He alleged therein that opponent No.2 had orally borrowed from him on 25-3-1950 Rs.3500/- and had agreed to repay the amount within 10-15 days but failed to do so. It was further alleged therein that he was carrying on trade in the name of his wife opponent No. 3 and that she too had agreed to repay the amount.

The suit was for the recovery of Rs.3500/- only. On the same day show-cause notice was issued to the opponents Nos. 2 and 3 and interim attachment was issued to the Kolhapur Court attaching this gold. The opponents 2 and 3 were shown therein as the residents of Sunkeri in Karwar Taluka. Yet they were served in another village called Kathinkon. They remained absent and an exparte decree was obtained against them after opponent put-in his affidavit on 10-1-1952. The suit was decreed the same day.

7. The opponent No. 1 filed Darkhast No. 25 of 1952, in the Karwar Court asking for transfer of the decree to Kolhapur and it appears that the decree was transferred to Radhanagari court and there opponent No.1 has filed Dar. No. 12 of 1952 and obtained an order for sales of the gold on 1-3-1953. The sale had been fixed on 1-6-1953.

8. In the meantime the Central Excise Authorities were doing their best to get hold of the gold either under section 180 or by attaching it on delivery to opponent No.3. To frustrate both these attempts this collusive decree was obtained and in furtherance thereof the sale of the gold has been ordered. Under Rule 11 of Order 38 when property has been attached before judgment it need not be reattached in execution. Therefore there has been no further attachment by Radhanagari Court. It is the order of attachment of this Karwar Court which is being executed by the Radhanagari Court. Rule 10 of Order 38 says that attachment before judgment does not affect the rights existing prior to attachment. (vide judgment of Justice Bhose dated 5-8-1952, in Shetujanrai vs. The Collr. of Customs. The right of the Central Government to confiscate or to attach this gold has got priority. The Central Excise Department had to move for postponement of the sale to get this attachment order passed by this court raised preferring an application under Rule 8 of Order 38. Hence this application has been filed as directed by the Union Government, on the following among other grounds :-

(1) The decree obtained by opponent No.1 against opponent Nos. 2 and 3 is collusive and fraudulent.

(2) Such a collusive decree and attachment before judgment were

obtained fraudulently and illegally with a view to frustrate the Central Excise Department attaching or obtaining the delivery of the gold in question

(3) The debt asserted by opponent No. 1 is denied

(4) The order of attachment is illegal.

(5) The Union Government has got a priority claim to seize, attach and confiscate the gold in question.

(6) The several requests and intimation given by the Central Excise Department to deliver the property to to the officers of Central Excise Department have been wrongly ignored.

It is therefore prayed that after hearing both parties the order of attachment of the gold passed by this court may kindly be set aside.

I, B. S. Navinkurve, District Government Pleader, do hereby declare thatthe contents of this application are all true according to the instructions given to me and from the information collected by me from the papers delivered to me which information is believed to be true.

Signed at Karwar on 12th June 1953.

MMS.

URGENT PLEASE.

13 13

From:

The District Government Pleader, Kanara.

To

The Remembrancer of Legal Affairs, Bombay.

No. 378 of 1953. Karwar, dated 12th June 1953.

Sir,

LEGAL DEPARTMENT
16 JUN 1953

The Assistant Collector of Central Excise and the Central Excise Officers of Karwar have instructed me to file a claim petition the draft of which has been sent herewith, as advised by the Union Government. On going through all the papers I have drafted this application. I have sent the draft for approval and this may please be returned soon treating it as most urgent as the claim petition will have to be filed immediately.

The facts of the case have been briefly stated in the application. The question ~~of~~ of filing a regular suit for obtaining a declaration that the gold is liable to be attached, seized or confiscated or for obtaining a declaration that the decree in small cause suit No. 240-1951 ~~as~~ is fraudulent will arise if this claim fails. As ordered by the Central Government this claim petition has been drafted and sent for your approval.

Yours faithfully,

Dist.Govt.Pl.Kanara, Karwar.

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No.
Dak No. 14733
Branch E.12-6-53

In the Court of the Civil Judge, S.Dn.,Karwar. 15 Z 15

Misc.No. of 1953.

The Union of India ... Petitioner.

Vs.

1. Digambar Laxman Natalkar, aged 37, goldsmith of Shahapur in Belgaum.
2. Yeshwant Narayan Revankar, aged 24, goldsmith resident of Kathinkon in Karwar Taluka.
3. Manjula Kom Yeshwant, aged 20, household work, -Do-

Opponents.

Claim : Rs.3500/-.

Respectfully submitted:

1. This application is submitted under O.38 Rule 8.C.P.C.
2. It appears that opponent No.3 is the wife of opponent No.2, and opponent No.1 is their relative. They are goldsmiths.
3. On 6-4-1950 ~~when~~ opponent No.3 who represented herself to be Manjula Yeshwant Naik of Shahapur-Belgaum and was proceeding towards Kolhapur ~~from~~ ~~to~~ Belgaum ~~who~~ was found in possession of 3 bars of gold and 6 bangles weighing in all 42 tolas, 2½ annas less one gunji. These bars had certain marks thereon. These marks ~~go to~~ show that they were bars imported from Goa territory
4. The gold was attached by the police for an offence under section 61(E) of the Bombay District Police Act. ~~The~~ A charge-sheet was sent up on 13-10-1950 to the court of the F.C.Magistrate of Radhanagar in Kolhapur district
5. On hearing of the detection and attachment of the above gold the Central Excise Authorities started enquiry and tried to get the ~~it~~ gold delivered to them. Import of gold in India is prohibited under the Foreign Exchange Regulation 1947, and Notification No.12(ii) FI/48 dated 25-8-1948 issued under section 8 of the Foreign Exchange Regulation Act read with section 19 of the Sea Customs Act 8 of 1878. It amounts to an offence under section 167(8) of the Sea Customs Act. Therefore attempt was made to get ~~the~~ delivery of the gold from the Court under sec.180 of the Sea Customs Act. This section lays down that

when things liable to confiscation under the Sea Customs Act are seized by any police officer on suspicion that they have been stolen, he may carry them to any police station or court at which a complaint connected with the stealing or receiving of such things has been made, and there detain such things until the dismissal of such complaint or the conclusion of the enquiry of trial. But in every such case the police officer seizing the things should send written notice of their seizure and detention to the nearest Custom House and immediately after the dismissal of the complaint he shall cause such things to be conveyed to and deposited at the nearest Custom house to be ~~there~~ proceeded against according to law. This gold was liable to confiscation and the Central Excise Department was entitled to get delivery of this gold from the Court in ordinary course after the disposal of the case.

6.The case against the opponent No.3 was Cr.Case No. 56 of 1951 of the Court of Radhanagar. It was postponed from day today and finally was ordered to be withdrawn by the A.D.M.Kolhapur. There were 2 ~~more~~ other similar cases of this type and after ~~the~~ this disposal the gold was taken charge of by the Central ~~Exise~~ Excise Department. Realising that this gold also will similary be attached or would be handed over to the Central Excise Department under section 180 of the Sea Customs Act, the persons behind opponent No.3 invented a novel procedure to get the gold attached, through the Karwar Civil Judge's Court. On 20-11-1951, opponent No.1 filed ~~Suc.Cause~~ O.J. suit No.240-1951 against opponents Nos. 2 and 3. He alleged therein that opponent No.2 had orally borrowed from him on 25-3-1950 Rs.3500/- and had agreed to repay the amount within 10-15 days but failed to do so. It was further alleged therein that he was carrying on trade in the name of his wife opponent No.3 and that she too had agreed to repay the amount.

7-19
19

The suit was for the recovery of Rs.3500/- only. On the same day show-cause notice was issued to the opponents Nos. 2 and 3 and interim attachment was issued to the Kolhapur Court attaching this gold. The opponents 2 and 3 were shown therein as the residents of Sunkeri in Karwar Taluka. Yet they were served in another village called Kathinkon. They remained absent, and an exparte decree was obtained against them after opponent No. 1 put-in his affidavit on 10-1-1952. The suit was decreed the same day

7. The opponent No.1 filed Darkhast No. 28 of 1952 in the Karwar Court asking for transfer of the decree to Kolhapur and it appears that the decree was transferred to Radhanagar court and there opponent No.1 has filed Dar.No.12 of 1952 and obtained an order for sale of the gold on 1-3-1953. The sale had been fixed on 1-6-1953.

8. In the meantime the Central Excise Authorities were doing their best to get hold of the gold either under section 180 or by attaching it on delivery to opponent No.3. To frustrate both these attempts this collusive decree was obtained and in furtherance thereof the sale of the gold has been ordered. Under Rule 11 of Order 38 when property has been attached before judgment it need not be reattached in execution. Therefore there has been no further attachment by Radhanagar Court. It is the order of attachment of this Karwar Court which is being executed by the Radhanagar Court. Rule 10 of Order 38 says that attachment before judgment does not affect the rights existing prior to attachment. (X) The right of theCentral Government to confiscate or to attach this gold has got priority. The Central Excise Department had to move for postponement of the sale to get this attachment order passed by this Court raised by preferring

(X) vide judgment of Justice Bhose dated 5-8-1952 in Shetujanrai Vs. The collr. of Customs.

9/24-21

an application under Rule 8 of Order 38. Hence this application had been filed as directed by the Union Government, on the following among other grounds.

2.(1) The decree obtained by opponent No.1 against opponent Nos. 2 and 3 is collusive fraudulent and ~~frodulant~~

(2) Such a collusive decree and attachment before judgment were obtained fraudulently and illegally with a view to frustrate the Central Excise Department attaching or obtaining the delivery of the gold in in question.

(3) The debt asserted by opponent No.1 is denied

(4) The order of attachment is illegal.

(5) The Union Government has got a priority claim to seize, attach and confiscate the gold in question.

(6) The several requests and intimations given by the Central Excise Department to deliver the property to the Central Excise Department have been wrongly ignored.

Deputy Collector Bhavnagar Dy P.

It is therefore prayed that after hearing both parties the order of attacnment of the gold passed by this court may kindly be set aside.

I, B.S.Mavinkurve, District Government Pleader do hereby declare that the contents of this application are all true accoraing to the instructions given to me and ~~inexpapers~~ from the information collected by me from the papers delivered to me which information is believed to be true.

Signed at Karwar on 12-6-1953.

2323

Immediate. No. 13337/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 20th June 1953.

Subject:- Misc. No. of 1953.
The Union of India.
vs.
Digambar Laxman Natalkar.
acquisition Matter.

MEMORANDUM.

With reference to his letter No. 378 dated the 12th June 1953 on the subject noted above, the District Government Pleader, Karwar is informed that two copies of the revised application are sent herewith for necessary action.

for Remembrancer of Legal Affairs.

To

The District Government Pleader,
Kanara.

BM.
20.6.

Submitted for signature
20/6
20(VI)

issued
20/6

24

File in Misc. Suits Kanara/53

Nb
20/6

Reptd. NB 20/6/53

Misc. Suits Kanara/55

23/6/53

25 25

Statement showing the civil suits pending in the court of the Civil Judge Senior Division, Karwar, for the month of May 1953.

No. of suit and year of institution.	Date of institution.	Whether W.S.filed.	State at which stage pending.
p.O.S.No. 2-1953.	1-4-1953.	No.	Fixed for filing W.S. on 24-6-1953.

No. 358 of 1953.
Karwar, dated 8th June 1953.

Submitted to the Remembrancer of Legal Affairs Bombay with reference to Government Circular, Legal Department No.6404, dated 8th June 1949

Dist.Govt.Pl.Kanara,Karwar

LEGAL DEPARTMENT

12 JUN 1953

GOVERNMENT

14502

D. 13-6-53

2727

Below monthly return for the month of May 1953, from the District Government Pleader of Kanara

---

No. 12902/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 13th June 1953

Forwarded with compliments to the Collector of Kanara Sp/, with a request that the report and papers regarding Suit No. 1 of 1953 mentioned in the return may be submitted at an early date in accordance with rule 118 of the Law Officers' Rules.

By order,

Submitted for signature
P 13/6
Issued 15/6

for Remembrancer of Legal Affairs.

VGP.
11/11.

29 ZC

Below monthly return for the month of May 1953,
from the District Government Pleader of Kanara

12902/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 13th June 1953.

Forwarded with compliments to the Collector of Kanara so/s with a request that the report and papers regarding Suit No. 2 of 1953 mentioned in the return may be submitted at an early date in accordance with rule 118 of the Law-Officers' Rules.

By order,

R
13

for Remembrancer of Legal Affairs.

15/6

VGP.
11/11.

No. TXA 5317
Karwar 16-6-53

F. W. Cs. to the D. A. P. Kanara for remarks.

for Collector of Kanara

19/6

D.O.

No. 386 of 1953.
Karwar, 22.6-1953.

Very Urgent

R.W.Cs.

2. This is a suit filed by the Bombay State against Shri D.N.Bhat Gopi after obtaining necessary sanction. The suit is fixed for the W.S. of deft-Shri D.N.Bhat Gopi but it appears that this reference has been made under an impression that this is a new suit filed against Government by someone. This is not so. Sanction has already been taken. There is nothing to be done by the R.L.A's Office at present.

D.G.P.Kanara.

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
15808
C.30-6-53

Legal Department,
Secretariat, Bombay.
29 JUN 1953

No. TR
Karwar, 24—6-1953

F.w.cs. to the Remembrancer of Legal Affairs, Bombay. (26)
The D.G.P. Kanara's above endorsement may please be perused

Submitted for orders please
Kanara 1/53
for Collector of Kanara. 14/7/53

DOCKET SHEET.

Subject: Suits. Kanara

File No. 3987-A

Legal Department.

..... Branch.

The State of Bombay
Vs
Ganapaya Bhatta Subbaya Bhatta

References

Date	To whom sent	Notes and instructions.
1) 2/53		
3/53	Shu- Bona	

3333

Office of the R.L.A.

The report under rule 108 of Law Officers Rules submitted by the Collector of Kanara is not complete in many respects. The Civil Supplies Department is requested to obtain information on the following points :-

(1) When the delivery of the bags were given to the Godown keeper, were they given after weighing or were they delivered only after counting the numbers ?

(2) Whether the register kept at the godown was maintained according to the number of the bags in the godown or whether it was according to the quantity or weight of the commodity ?

(3) What were the duties of the Godown keeper at Herur ?

(4) Whether the Godown keeper was paid any salary ? Was he a public servant ?

(5) Whether the Collector has passed orders regarding the amount to be claimed from the Godown keeper ?

(6) Whether a demand was made of the Godown keeper to pay up the amount of the shortages found by the Collector ? If any reply was received from the Godown keeper in answer to the Collector's letter of demand, a copy of the reply should be forwarded to this office.

(7) Whether any security was taken when the Patel was appointed as the Godown keeper ? If so, who were the sureties ? A copy of the surety bond should be forwarded to this office.

for Remembrancer of Legal Affairs.

× with case pps. U.R. to C.S.D. No. 16172/E, dated the 31st July 1953.

cks/30.7.

Subdh. for sign
30/7/53
SO(M)

35 35

No. 13449/12

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 23rd June 1953.

Subject:- The Bombay Tenancy and Agricultural Lands Act, 1948 - Declaration of S. 6(2) Ultra vires.

MEMORANDUM.

With reference to the subject noted above, the attention of the Sub-Government Pleader, Kumta is invited to a newspaper Report which shows that the Civil Judge Kumta has made a eferenc to the High Court recommending that section 6(2) of the Bomoay Tenancy and Agricultural Lands Act, 1948 be declared ultra vires. He is therefore requested to send to this office an uncertified copy of the Judgement of Reference and to state if any notice was issued to the Advocate General under Order 27A of the Civil Procedure Code in this case.

Issued 24/6

for Remembrancer of Legal Affairs.

To

The Sub-Government Pleader,
Kumta.

BM.
22.6.

Submitted in original 24/6 Sol(M)

Await reply from Sub-Govt. Plant
Kumta

Thu
23/6

Supdt. NB
23/6-53

S.G.P.K.No. 15 of 1953. 37 37

From

Shri. R.V.Pandit, B.A.LL.B.,
Sub-Government Pleader, Kumta.

To

The Remembrancer of Legal Affairs, Bombay.

Subject :- The Bombay Tenancy and Agricultural Lands Act 1948

Declaration of section 6(2) ultravires.

Legal Department,
Co Mariat, Bombay.
6 - JUL 1953

Sir,

With reference to your letter No. 13449/E dated 23rd June 1953, I have the honour to inform you that in as much as the case papers have been sent to the High Court by the Civil Judge, Kumta, it is not possible for me to get an uncertified copy of the judgment. As the Plaintiffs' pleader told me that he would give me a printed copy of the judgment, I waited till now. It is not known when the printing work will be completed. Therefore, I regret that I could not send the uncertified copy of the judgment.

On enquiry I learn, that the Advocate General was not served with the notice, under order 27A of the Civil Procedure Code.

Yours faithfully,

Kumta,
2nd July 1953.

Subordinate Government Pleader,
Kumta.

THE SPECIAL (ANY) GOVERNMENT
LEGAL DEPARTMENT
Folio No.
Sub No. 1630
E. 7-7-53

Submitted
Pl. see this mem. at P. 1 ante
Pl. see Sub. P.P. letter above.
for orders.
7/7
a copy of the judgment should be obtained from the High Court
Sol (M)

5 38 39

S.G.P.K.No. 20 of 1953.
Kumta, 4th July 1953.

From

Shri. R.V.Pandit, B.A.LL.B.,
Sub-Government Pleader, Kumta.

To

The Legal Remembrancer of Legal Affairs,
Bombay.

Subject :- B.T. and A.L.Act, 1948.
Declaration of section 6(2) ultravires.

Sir,

In continuation of my letter S.G.P.K.No. 15 of 1953, dated 2-7-1953, I have the honour to inform you that I secured the printed copy of the judgment required by you today, and am forwarding the same to you. Please acknowledge receipt of the same.

Yours faithfully,

R.V.Pandit
Sub-Government Pleader, Kumta.

16841
6-11-53.

UD

Submitted for orders.

Please see D.S.P.'s letter and Sol.'s note at P. 3.

It seems D.S.P. has now forwarded a copy of Instrt. 2 Reference, S.P. which may not be required to forward a copy of the same

13/7

Sol (M) 13/7

41 44

Judgment on S. 6 (2) the B.T. & A.L. Act 1948 & Bombay Govt. Notification issued thereunder.

In the Court of the Civil Judge, Junior Division, at Kumta.

Small Cause Suit No. 46 of 1953.

Plaintiff: Subraya Venkatraman Naik, 45, Rayat, resident of Kodkani in Kumta Taluka

Defendant: Narayan Masti Patgar, 59, Rayat, resident of Hegde in Kumta Taluka

Claim Rs. 32-10-4.

JUDGMENT

This is a landlord's suit for the balance of rent due to him from defendant who is a tenant of the suit-land belonging to plaintiff. Plaintiff claims that he is the owner of the suit land and that he leased the same to the defendant on *mulgeni* by a registered deed reserving a yearly rent of 6-1/2 *managis* of rice and 300 bundles of grass. On 7-4-1953, defendant paid Rs. 30-4-0 as rent for the year 1952-53. Plaintiff is entitled to Rs. 71-14-0 as rent calculated at the rate of 1/3rd of the crop-share on the basis of the notification of the Mamlatdar declaring the average yield. Deducting the amount of Rs. 30-4-0 already paid by the defendant plaintiff sues for Rs. 32-10-4 as the balance of rent yet due from the defendant.

2. Plaintiff further alleges that the State of Bombay has issued a Notification in December 1952, under Section 6(2) of the Bombay Tenancy Act 1948, declaring that the maximum rent payable by any tenant shall be 1/6th of the crop of such land. Plaintiff avers that this Notification is invalid. While issuing a notification the State Goverment must state the particular area and the reasons for such notification. The State Goverment while issuing this notification does not appear to have done so. Plaintiff avers that section 6(2) does not empower the State Goverment to issue notifications without giving its thought, without taking into consideration the local conditions and without restrictions. Moreover the State Goverment has power to issue a notification under section 6(2) once only and that power has been spent when it exercised by issuing the first notification. Goverment cannot go on issuing series of notifications under Section 6(2) from time to time and as and when it suits. Thus at the time of issuing the impugned notification in December 1952, the State Goverment had already spent its power by issuing a prior notification. Hence the notification of December 1952 extending the provisions to North Kanara District is bad. The State Goverment had issued a similar notification in respect of Haliyal Taluka of North Kanara District. So the power to issue notification under Section 6(2) has been spent away long back.

3. Plaintiff further alleges that the power to issue a notification under Section 6(2) amounts to a legislative power and hence it is the function of the Legislature to make the rule and not the State Goverment and hence the State Legislature cannot delegate its function to State Goverment. Therefore, Section 6(2) of the Tenancy Act is ultra vires. Hence Plaintiff claims that the impugned notification is bad in law and ultra-vires and therefore he is entitled

to recover rent at the rate of 1/3rd crop share as prescribed by section 6(1) of the Tenancy Act. Plaintiff, therefore, prays that he may be awarded decree for the balance of the rent amounting to Rs. 32-10-4, calculated on the basis of 1/3rd of crop share.

4. Defendant has put in his written statement at ezh. 11. He danies the plaintiff's claim. He contends that calculated at 1/6th crop share he had paid rent in ezcess of what was due to plaintiff. Plaintiff claims Rs. 71/-and odd at 1/3rd rent; and 1/6th rent at this rate will be Rs. 35/- and odd, whils defendant has paid Rs. 39/- and odd. He claims refund of the amount paid in excess. He further contends that the notification issued by the Goverment under Section 6(2) of the Tenancy Act prescribing the rate of rent at 1/6th of the crop share is valid, that it is not necessary for the State Goverment to give reasons for the issue of the notification nor can it be said that the notification is issued without reasonable grounds; that the power of the State Government did not end with the issue of the first notification, that the State Goverment has every right to determgine what quantum of rent is payable by tenants of particular area, that as the plaint contains allegations against the State Goverment, the State of Bombay is a necessary party to this suit, that the plaintiff cannot claim in excess of 1/6th share of the crop, that the suit involves constitutional questions and therefore this court has no jurisdiction to try this suit. On these grounds the defendant prays that the suit may be dismissed with costs.

5. As this small cause suit involves nice questions of law and also of jurisdiction of this court, I framed issues at exh. 12 and set down some of them as preliminary issues. The issues are as under:

1. whether the Noticatiou issued by the State of Bombay dated 8th December 1952 reducing the mazimum rent to 1-6th of the prduce is valid ?
2. Does issue no. 1 amount to a Constitutional question ?
3. If so, whether this court has jurisdiction to inquire into that issue ?
4. Is the State of Bombay a necssary party to this suit ?
5. Whether defendent is entitled to a refund of the amount as stated by him in para of his written statment ?
6. What reliefs ?
7. What order?

N. B. Issues nos. 1 to 3 are treated as preliminary issues at the request of the parties.

6. My findings on these isrues are as under:

Issue no. 1: Issue referred to the Hon'ble High Court.
Issue no 2: In the affirmative.
Issue no 3: The court has jurisdiction to inqire, but not to decide in the negative.
Issue no. 4: } Findings reserved
Issue no 5: }
Issue no 6: }
Issue no 7: Interim order as stated below.

REASONS

Issue No. 2. I take up issues nos. 2 and 3 first, because these issues will determine the nature and scope of inquiry of issue no. 1. Now learned pleader Mr. Shanbhag for the plaintiff has challenged the impugned notification (text of the notification given supra para 21) dated 8th December 1952 on three grounds: viz.

(i) The Notification is void because Section 6(2) of the Tenancy Act, under which the notification is purported to be issued is void and ultra vires the State Legislature.
(ii) Assuming that section 6(2) is intra vires, the State Legislature, yet, the impugned notification is void as being issued beyond the scope of authority conferred on the State Goverment by section 6 (2) of the Tenancy Act.

(iii) Alternatively although it may be within the scope of authority of Section 6(2), the notification is bad and invalid, as it is not purported to be based on any reasonable grounds or suitable basis, which is apparent from the notification itself.

Out of these three grounds the first ground of objection necessarily involves a question as to whether the provisions of section 6(2) of the Tenancy Act are valid and that the determination of this question is necessary for the disposal of the case. Mr. Shanbhag challenges this section 6(2) of the Tenancy Act on the ground that the State Legislature went beyond the scope of its authority conferred by the Constitution in enacting section 6(2) and hence it is ultra vires. This question is covered by the athority and has been treated as an instance where a question of a constitutional interpretation is involved. Vide i. Bata Shoe Company Vs. Burdwan Municipality (1949) 12 F. L. J. 67, ii. Jatindra Vs. Province of Bihar. (1949) 12 F. L. J. 225. I therefore hold that issue no. 1 involves a constitutional question and answer issue no. 2 in the affirmative.

8. Issue no. 3: The defendant has challenged the jurisdiction of this court to try this suit because it involves a constitutional question. It is true that some support can be found to this contention in Article 228 of the Constitution wherein it is Provided:

"If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of the constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may

(a) either dispose of the case itself, or

(b) determine the said question of law.....

It is, therefore, argued that it impliedly takes away the jurisdiction of the subordinate courts. Now the Civil and Criminal Procedure Codes have been amended by Act XXIV of 1951 to give effect to this provision by which it is provided that where any court is satisfied that a case pending before it involves a question as to the validity of any Act or of any provision contained in an Act, and the determination of which is necessary for the disposal of the case and is of opinion that such Act or provision is invalid or inoperative but has not been so declared by the High Court or the Supreme Court, the court shall state a case setting out its opinion and the reasons therefore and refer the same for the decision of the High Court. So, one thing is clear from the reading of Article 228 and the amended Section 113 of the Civil Procedure Code that there is no initial bar to the jurisdiction of the court where constitutional questions are involved. The court can first inquire whether the particular question is covered by any ruling of the High Court or the Supreme Court and if it is so covered it can record its finding accordingly. If the question is not covered by any ruling and if the court comes to the conclusion that the Act or any provision of any Act is invalid, then it may refer the question. It means, therefore, that the Court has power to inquire into the question and if it comes to the conclusion that the Act or any provision is valid it can give effect to it and decide the matter, but if it comes to the contrary conclusion it shall refer the case for the opinion of the High Court. I, therefore, hold that this court has jurisdiction to enquire into issue No. 1, but it has no jurisdiction to decide in the negative finally. Issue no. 3 is, therefore, answered accordingly.

9. Issue no. 1: I had the benefit of hearing very learned arguments at the Bar on this issue. On a careful consideration of all the arguments on this issue, I have come to the conclusion that Section 6(2) of the Tenancy Act is ultra vires the State Legislature. In the result, therefore, I have to act under proviso to Section 113 of the Civil Procedure Code, as this Section 6(2) of the Tenancy Act has not been declared to be invalid or inoperative either by our High Court or the Supreme

Court. I, therefore, state this case and refer the same for the decision of the Hon,ble High Court and frame the following questions for their decision.

Qustion no. 1: Whether Section 6(2) of the Bombay Tanancy Agricltural and Lands Act, 1948, is invalid and inoperative being ultra vires?

Question no. 2: If not, whether the impugned Notificaton is beyond the scope of section 6(2) of the said Act and therefore invalid?

10. My opinion on these two questions is as under:—

Question no. 1: In the affirmative.
Question no. 2: In the affirmative.

11. Question no.1: The State of Bombay, in exercise of the power under Section 6(2) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hear-in-after referred to as Tenancy Act) has issued notification dated December 8, 1952 fixing the rate of maximum rent payable by tenants of agricultural land at 1/6th the share of the crop in place of 1/3rd or 1/4th the crop share fixed by clause 1 of Section 6 of the Tenancy Act. The question is whether the Notification is valid, or more particularly whether subsection 2 of section 6 of the Tenancy Act is valid.

12. Normally the question as to what rent shall be paid by a tenant to a landlord and what should be the terms of a lease-hold are matters purely of contract between the parties. The first inroad on this freedom of contract in respect of agricultural lands was made when the Bombay Tenancy Act, 1939 was put on the Statute Book. The present Tenancy Act of 1948 has replaced that Act and is in force throughout the State of Bombay. Now, although this Act may or may not encroach upon the fundamental rights guaranteed by our Constitution, the Act having received constitutional recognition by virtue of the first amendment to the Constitution enacting Section 31(B); it is beyond the scope of the courts to determine the validity of the Act so far as it contravenes any of the provisions of Part III. But the first amendment has gone only thus far and no further. If the validity of the Act or any provisions thereof could be challenged on any other ground than those in Part III, the Act or any of its provisions will have to be declared void. The scope in Article 31 (B) is thus limited to Part III of the Constitution only which deals with fundamental rights. With these preliminary remarks I will now proceed to inquire into the problem before us.

13. Now the Teuancy Act was passed in 1948 when the Government of India Act, 1935 was in operation. The Provincial Legislature, therefore, enacted the Tenancy Act under authority derived from Section 100 of the Government of India Act, 1935, which provides, among other things, that the Provincial Legislature has, and the Federal Legislature has not power to make laws for a province or any part thereof with respect to any of the matters enumerated in list II. Now this legislation falls under entry no. 21 in Provincial Legislative List II of Schedule VII of the Government of India Act, 1935. It provides:

> "Land, that is to say, rights in or over land, land tenures, including the relation of the landlord and tenant; and the collection of rents, transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonisation; courts of wards; encumbered and attached estates; treasure trove."

This entry has been adopted verbatim in our Constitution in entry no. 18 except the last few items from ' Court of Wards ' onwards. The Tenancy Act has, therefore, been enacted by virtue of power vested in the Bombay Lagislature by Section 100 read with entry no. 21 of tke Schedule VII to the Government of India Act. We shall now come to the Section 6 of the Tenancy Act. It is in the following terms:

"(1): Notwithstanding any agreement, usage, decree or order of a Court or any law, the maximum rent payable by a tenant for the lease of any land shall not, in the case of an irrigated land, exceed one-fourth and in the case of any other land exceed one-third of the crop of such land or its value as determined in the prescribed maner.

(2): The Provincial Government may, by notification in the Official Gazette, fix a lower rate of the maximum rent payable by the tenants of lands situate in any particular area or may fix sueh rate on any other suitable basis as it thinks fit."

Clause 1 of this Section provides that the rent payable by a tenant of agricultural land shall not exceed one-fourth in the case of irrigated lands and one-third of the crop in any other case. This clause is perfectly a valid piece of law and it falls within the purview of "collection of rent" as enumerated in entry no. 21 above. But the Legislature did not stop there. It went further and enacted in clause 2 that the Provincial Government may by notification fix a lower rate of the maximum rent payable by a tenant without putting any restriction on the extent to which the Provincial Government was at liberty to go. The question, therefore, is whether the Legislature was at all competent to enact such a clause giving a blank cheque to an executive administrative body.

14. Now this provision permitting the Provincial Government to place its own law in substitution to the one enacted by this legislation in clause 1, may either amount to (i) conditional legislation, or (ii) subordinate legislation, or (iii) delegated legislation effacing itself. The question must depend in what catagory the enactment of the impugned clause 2 of Section 6 falls. It cannot be denied that the Bombay Legislature is a soveriegn legislature under our Constitution within its territorial limits deriving its authority from the Constitution. Within its territorial limits it has plenary powers of legislation. Dealing with Article 245 of our Constitution Durgadas Basu in his learned 'Commentary on the Constitution of India' states the ways in which a State Legislature can exercise its legislative authority at page 626 in the following words:

"(i) It may legislate absolutely or conditionally, in the latter case leaving to the discretion of some external authority the line and manner of carrying its legislation into effect, as also the area over which it is to extend;

(ii) It may authorise subordinate bodies to make bye-laws or regulations under the Statute for its detailed administration;

(iii) ....."

15. In this respect it would be better to bear in mind here that although the legislature is at liberty to legislate conditionally or authorise a subordinate body to make bye-laws, it is now settled law that it cannot delegate its functions of "law-making." It is a "constitutional trust". Durgadas Basu gives the following quotation from Cooley on Constitutional Limitations, Vol. I, at page 224:

"No legislative body can delegate to another department of Government or to any other authority, the power either generally or specially to enact laws. The reason is found in the very existence of its own powers. This high prerogative has been entrusted to its own wisdom, judgment and patriotism and not to those of other persons and it will act ultra vires if it uudertakes to delegate the trust instead of executing it.

Where the soveriegn power of the state has located the authority there it must remain; and by the constitutional agency alone the laws must be made until the constitutional agency itself is changed. The power to whose wisdom, judgment and partiotism the high prerogative has been entrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved nor can it substitute the judgment, wisdom and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust.." (Page 632, Basu's Commentary on the Constitution of India).

The learned author has propounded this theory of "constitutional trust" in bold and clear terms and this doctrine has been accepted by our Supreme

Court as applicable to India inasmuch as it lay at the foundation of representative democracy itself. " It means that the legislature cannot abdicate its legislative functions and set up a parallel legislature to discharge a primary duty with which it has been entrusted. (Ref: Case no. 1 of 1951, Kania C. J., Mahajam, Mukharjee, JJ.). So it is quite clear from the aforesaid discussion that if section 6 (2) of the Tenancy Act comes within the mischief of delegated legislation of this magnitude as to eclipse the legislature itself, Section 6 (2) will certainly be ultra vires the Provincial Legislature in view of the doctrine of constitutional trust as upheld by the Supreme Court. We shall, therefore, direct our inquiry as to whether or not the impugned section comes within that purview. For this purpose, we shall have to consider in detail as to what is conditional or subordinate legislation.

16. Durgadas Basu states that subordinate legislation is akin to administrative delegation i. e. the power to entrust the administration of a legislation to subordinate agencies. The learned commentator has then quoted from the judgments of the Supreme Court of the U. S. A. as to what may be delegated to the executive for the purposes of administering a law. The observations are quite instructive and I cannot resist the temptation of quoting them below:

> " Undoubtedly the legislature must declare the policy of the law and fix the legal principles which are to control in given cases; but an administrative body may be invested with the power to ascertain the facts and conditions to which the policy and principles apply. If this could not be done there would be infinite confusion in the laws and in an effort to detail and to particularise they would miss sufficiency both in provision and execution.
>
> The true distinction, therefore, is between the delegation of power to make the law which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution to be exercised under and in pursuance of the law. The first cannot be done, to the latter no valid objection can be made." (Page 630: Constitution of India by Durgadas Basu).

So we see that the essence of a subordinate legislation lies in administratively carrying out the policy of the Act with discretion as to its execution. If the power thus granted to a snbordinate body amounts to the determination of " what the law shall be ", then it comes within the mischief of delegation of a power to legislation which cannot be done.

17. We will next examine what is conditional legislatiou. Turning again to Durgadas Basu's commentary we see that the learned commentator has stated in clear terms as to what conditional legislation is. It would be convenient to reproduce the same:

> " A legislature legislates conditionally when it enacts that a legislation shall come into operation at all, or in some particuler area only upon an executive determination or upon the happening of a particular event. In such a case the legislature makes the law itself but simply authorises another body to declare when and where it shall have its effect; here there is no delegation of the essential legislative function but of the power of declaring the time and manner of carrying the legislation into effect as well as the area over which it is to extend. In other words though the legislature cannot delegate its power to make law, it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend."

Then the learned author quotes from Lock's Appeal 10 American Reporter 716, quoted with approval in Jotinder Vs. Province of Bihar (1949) F. L. J. 225 (248) and Ref. no. 1 of 1951 Supreme Court, by Kania C. J. The quotation is as follows:

> " To deny this would be to stop the wheels of Government. There are many things upon which useful legislation must depend which cannot be known to the law making power and must therefore be a subject of inquiry and determination outside the halls of Legislation."

In substance, therefore, conditional legislation is that power to legislate to determine the place, manner and time of a particular legislation to come into effect and also the circumstances under which it shall come.

18. Then we come to the delegated legislation. It means delegation of its own functions to another body so as to efface itself. Basu states the principles of law as under:

"The theory against delegated legislation means that legislature cannot delegate the legislative authority conferred upon it to any other body or department. 'The authority must remain where it is located and the power to which the prerogative has been entrusted cannot relieve itself from the responsibility by choosing other organs upon which it shall be devolved. (Cooley)'. The Legislature cannot efface itself and set up a parallel legislative authority and transfer to it the essential legislative function i. e. the power to determine what the law shall be.' (per Mukherjea J. in Jatindra Versus Province of Bihar, 1949, F. L. I. 225 (248)."

19. We have so far acquainted ourselves with the nature of legislation and the distinction between the subordinate, conditional and delegated legislation. We have noted the observations of eminent jurists. Now, before proceeding to apply these principles to the impugned section 6 of the Tenancy Act, we shall have to acquaint ourselves with the principles of interpretation of the legislative lists.

20. The learned author Basu has summarised these rules of interpretation of legislative lists and I must confess I cannot do better than exploring the rich mines of his work and quoting the relevant portion therefrom. At page 619 he states the rules:

" 1. The Entries in the Lists should be given a large and liberal interpretation, the reason being that the allocation of the subjects in the Lists is not by way of scientific definitions but by way of a mere simplex enumeratio of broad categories. So none of the items in the lists is to be read in a narrow or restricted sense and each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it.

2. The words " that is to say " in the several entries are merely illustrative and not words of limitation.

3.....

4.....

5.....

6. To determine whether an enactment is ultra vires or not the primary test is that of 'pith and substance' etc. etc,"

It is, therefore, clear that when interpreting the Entry as to what power has been given to the legislature we are required to give a broad meaning to the words used and that the words "that is to say" that occur in Entry no. 21 quoted above in para 3 should be understood to mean *ejusdem generis* or merely illustrative. The doctrine of 'pith and substance' comes into play more particularly when there is a conflict between the different legislative lists. But in determining whether a legislature has acted within the scope of the authority granted to it by a particular entry and also what power was delegated to the State Government by the impugned Section 6 (2) of the Tenancy Act, we may conveniently make use of the doctrine. We shall now directly proceed to Section 6 (2) of the Tenancy Act and test its validity on the touch-stone of various principles enunciated above.

21. As I started by saying it is the function of the Provincial Legislature under Section 100 of the Government of India Act 1935, to legislate on matters enumerated in List no. II, now Entry no. 21 quoted above provides for 'land'. This term has been extended by the words " that is to say " to include:

i Rights in or over land,
ii, Land tenures,
iii, the relation of landlord and tenant,
iv, the collection of rents,
v, alienation and devolution of agriculturul land,

This amplification of the term 'land' both in the Government of India Act, 1935, and Entry no. 18 in the State Legislative list in Schedule VII of our Constitution strongly suggests that the framers of the Constitution were not satisfied with leaving the term 'land' alone. They particularly emphasised that it is the Provincial Legislature alone that can legislate on matters enumerated above and no other body. Not only that, we can extend these sub-heads also as they are merely illustrative. Whatever law is calculated to affect any of these enunciated factors cannot be passed by any other body than the legislature. So, it follows that any law made by any other body which seeks to trespass upon

(i) the rights in or over land,
(ii) land tenures,
(iii) the ralation of landlord and tenant,
(iv) the collection of rents,

is clearly ultra vires and that under the doctrine of constitutional trust if the legislature has invested anybody with any such power that law is to that extent ultra vires the Legislature. The framers of the Constitution have very jealously guarded these factors from 'legislative indolence' and intrusion by a foreign body over this field of legislation. Now, the notification dated December 8, 1952 under section 6 (2) is published at page 1657 in Part IV B. of the Bombay Government Gazette, dated 16th December 1952 as under:

"In exercise of the powers conferred by Sub-Section (2) of Section 6 of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948) and in supercession of Government notifications in the Revenue Department noted in the margin, the Government of Bombay is pleased to fix in the case of land, whether irrigated or not, one-sixth of the crops of such land or its value as determined in the prescribed manner, as the maximum rent payable by tenants of lands situate in the areas specified in the Schedule appended hereto."

This notification enacts that from a certain date, tenant shall pay 1/6th of the crop of such land. By clause 1 of section 6 the legislature made the law that a tenant shall pay 1/3rd of the crop as the maximum. So, when the legislature has applied its legislative mind to the factors enumerated in i to iv above and after giving its anxious consideration, it has laid down the policy that the tenant shall pay 1/3rd share of such crop, can it be said that in enacting section 6 (2) giving unlimited power to fix to any lower rate of maximum rent payable, the legislature has applied its legislative mind and laid down the policy? In my opinion after fixing the maximum rent at 1/3rd the Legislature has shown legislative indolence in giving a 'blank cheque' in the hands of the State Goverument to fix any lower rate without limitation. Now it cannot be denied for a moment nor is it necessary to illustrate the point by anthorities that the question what quantum of rent should be paid by a tenant is a very vital matter that governs the very relation of landlord and tenant. It is the essence of that relation. Moreover it is a matter which affects the rights of the parties in respect of the land. It is a matter which pertains very closely to 'collection of rents'. So, when this matter of fixing a rate of rent acts as lining to all the three items of the Entry no. 21, it is difficult how it can be treated as only an administrative detail. The legislature declared its policy that the rent-payable should be 1/3rd of the crop. Let us assume that it also declared its policy that under certain circumstances, the rate of rent should be still lower. But in declaring this policy, the Legislature did not lay any limit upto which the rate of maximum rent payable may be reduced. The Legislature sat tight on the fence by clause 1 of section 6, but failed to catch sight to what extent the State Government should be allowed to stretch its powers to determine the maximum rent payable. Under the existing provisons, the State Government is at liberty to fix 1/10th, 1/100th or 1/1000th the share of the crop and thus set at nought the legislative trust that is reposed by the people in their Legislature.

So, we see that in enacting section 6 (2), the legislature did not lay down any policy or expressed its will and therefore the power to issue notification cannot be called as to fill in administrative or executive details. It is a calculated encroachment upon the powers of the legislature so as to eclipse the legislative functions enumerated in items i to iv above. This deligation of legislative functions amounts to a breach of the constitutional trust and hence ultra vires the State Legislature.

"22. Now the question about the scope of Entry no. 21 of the Provincial Legislative List had directly been on the judicial anvil in United Province Vs. Atique Begum and others, A. I. R. 1941, Federal Court, 16 at Page 25. Sir Maurice Gwyer C. J. has quoted the following passage from the judgment of Iqbal Ahmed J. in respect of the interpretation of Entry no. 21:

> "By the authority given to it to make laws about the "collection of rents" the Provincial Legislature is in my judgment, authorised to provide about payment of rent in cash or kind, to fix the instalments in which rent is to be collected *to make provision about abatement or enhancement of rent*, to prescribe the conditions under which the rent may be remitted to regulate the method by which the rent is to be collected and legislate about kindred matters. The impugned Act, however, is not with respect to any such matter. It is therefore, outside the scope of Entry no. 21 of the Provincial List." (Underlines [italics] mine).

The learned Chief Justice has criticised this judgment and has in fact enlarged the scope of Entry no. 21. His Lordship observes:

> "The general descriptive words in item no. 21 include 'the collection of rents': and if a Provincial Legislature can legislate with respect to the collection of rents it must also have power to legislate with respect to any limitation on the power of a landlord to collect rents, that is to say with respect to the remission of rents as well as to their collection...I have no doubt that legislation with respect to the remission of rents is legislation with respect to a matter included in item no. 21.

It is, therefore, clear beyond doubt that it is the function of the Provincial Legislature to make law in respect of 'collection of rents' and this item necessarily includes in its fold the power to fix the maximum rent which a landlord may collect. The 'pith and substance' of the impugned notification is the maximum rent payble by tenant conversely maximum rent which a landlord may collect. The power thus exercised by the notification is co-extensive with the power of legislation exercised by the Provincial Legislature in enacting clause 1 of Section 6 and the notifioation thus completely eclipses the law made by the legislature in clause 1 of section 6. It is purely the function of the legislature to say what rent should be payable by a tenant and as the function of section 6 (2) is not only to fill in administrative details or carrying out of the policy of the legislature, it is submitted, it amounts to delegation of legislative function to make law and hence ultra vires the Provincial Legislature and therefore both section 6 (2) and the impugned notification are void. If authority were needed as to whether the unrestricted power of reducing the rate of maximum rent payable by a tenant amounts to a legislative power or not, I will only refer to the observations of Kania C. J. at page 178 in Jatindranath Vs. Province of Bihar, 1949, A.I.R., F.C. 175 wherin His Lordship observes:

> "The power to extend the operation of the Act beyond the period mentioned in the Act prima facie is a legislative power. It is for the legislature to state how long a particular legislation will be in operation. That cannot be left to the discretion of some other body. *The power to modify an Act of a Legislature, without any limitation on the extent of the power of modification, is undoubtedly a legislative power.*." (underlines [italics] mine)

The last sentence is instructive. The power under clause 2 of sectinn 6 is certainly a power to modify section 6 (1) without any limitation, and as such a legislative power, and therefore cannot be delegated.

23. Now before parting with this questiou I must make a reference reported in 52 B, L. R. 571 Narottamdas Jethabhai Vs. Aloysious Pinto and 53 B, L. R. 402 in the same case in appeal to the Supreme Court. The question involved in this case was whether section 4 of the Bombay City Civil Courts Act, was ultra vires. Section 4 is as follows:

"Subject to the exceptions specified to section 3, the Provincial Government may by notification in Official Gazette invest the City Civil Court with jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature arising within Greater Bombay and *of such value not exceeding twenty-five thousand rupees as may be specified in the notification.*" (Underlines [italics] mine)

Pursuant to this power the Provincial Government issued a notification on January 20, 1950 investiug the Court with power to try suits upto the value of Rs. 25,000/-, The question was whether, in the circumstances Section 4 was ultra vires. Chagla C, J. after reviewing a number of authorities observed at page 585 as follows:

"These decisions made it perfectly clear to my mind that it is not open to a Legislature, supreme and sovereign as it may be within its own Province, to delegate to any authority the power of legislation which has been entrusted to it under the constitution. It is solely the privilege of the Legislature to make laws. In exercising that privilege it may entrust subordinates and agents with the power to carry out its policy and to give effect to the legislation, but the subordinates and agents must act within the policy laid down by the Legislature. It cannot create a parallel or alternative law- making authority.

Now, applying once more these tests to the City Civil Courts Act we find that the Legislature in the exercise of its legislative power has set up a Civil Court with a limited jurisdiction under Section 3 of the Act. It has not set up a Court with a jurisdiction higher than ten thousand rupees. Having set up a Court of limited jurisdiction, it has given to the Provincial Government under Section 4 the power to confer upon that Court a higher jurisdiction up to twenty-five thousand rupees. Now, this power which is conferred upon the Provincial Government is a power which could only have been exercised by the Legislature itself. What is left to the Provtncial Government is not the carrrying out of any details in deciding upon the territorial application of the Act nor fixing the time when the Act should come into force; but the power itself of legislation, which, under the Government of India Act, the Provincial Legislature alone could exercise, viz. conferring juridiction upon the Courts."

Applying these tests to the impugned section 6 (2) of the Tenancy Act and the Entry no. 21 of the Legislative lists, we will find that by clause 1 of Section 6, the legislature fixed the maximum rent as one-third of crop. Having done so the Legislature has given to the Provincial Government under Section 6 (2) the power to fix a lower rate of the maximum rent payable by tenants. Now this power which is conferred upon the Prvincial Government is a power which could only have been exercised by the Legislature itself. What is left to the Provincial Government is not the carrying out of any details in deciding upon the territorial application of the Act nor fixiug the time when the Act should come into force, but the power itself of legislation which under Entry no. 21 of the Government of India Act, the Provincial Legislature alone could exercise viz. collection of rents, relation of landlord and tenant and rights in or over land. I have advisedly used the words of my Lord the Chief Justice simply to illustrate how fittingly this impugned section fits in the frame of the quotation from His Lordship's judgmeut.

24. Now it is true that this jndgment was not upheld in appeal by the Supreme Court. But Their Lordahips of the Supreme Court rejected the judgment on quite other ground, they having held that in enacting section 4 of the Act providing the maximum limit of Rs. 25000 – with which the City Civil Court could be empowered the legislature had laid down a policy and had applied its legislative mind and expressed its will and that only the time and circumsrance were left to be determined. But in case of Section 6 (2) of the Tenancy Act these factors are absent.

There is no limit fixed by the legislature upto which alone the State Government could go as in the case of section 4 of the City Civil Courts Act. I will presently show how the judgment of the Supreme Court has hinged on this narrow point and how it can be distinguished on principle.

25. In 53 B.L.R.402 Fszli Ali J. dealing with the question of the validity of section 4 of the City Civil Courts Act observes at page 410 as follows:

> "The section itself shows that that the Provincial Legislature having exercised its judgment and determined that the new court should be invested with jurisdiction to try suits and proceedings of a cilvil nature of a value not exceeding Rs. 25000 -, left it to the Provincial Government to determine when the Court should be invested with this larger jurisdiction for which the limit had been fixed. It is clear that if and when the new court has to be invested with the larger jurisdiction, that jurisidiction would be due to no other authority than the Provincial Legislature itself and the Court would exercise that jurisdiction by virtue of the Act itself....."

So, this observation of His Lordship is clearly distinguishable in Section 6(2) of the Tenancy Act as there is no limit fixed by Section 6 (2) of the Act and the fixing of the 1/6th of crop by notification cannot be said to be done by virtue of the Tenancy Act itself. The observations of Mahajan J. at page 416 of the report also are clearly distinguishable and a good support to my view of section 6 (2) is found. His Lordship while dealing with the application of the legislative will to Section 4 observes:

> "Without applying its mind to the question as to whether the new court which it was setting up should have a jurisdiction higher than Rs, 10,000-, how could the legislature possibly enact in Section 4 that the pecuniary jurisdiction of the new Court would not exceed Rs. 25,000- The fixation of the maximum limit of the Court's pecuniary jurisdiction is the result of exercise of legislative will, as without arriving at this judgmet it would not have been able to determine the outside limit of the pecuniary jurisdiction of the new Court. The policy of the Legislature in regard to the pecuniary jurisdiction of the Court that was being set up was settled by sections 3 and 4 of the Act and it was to the effect that initially its pecuniary jurisdiction will be limited to Rs, 10,000 - and that in future if circumstances make it desirable - and this was left to the determination of the Provincial Government - it could be given jurisdiction to hear cases upto the value of Rs, 25,000 -

Further, on His Lordship quoting a passage from Queen Vs, Burah observes at page 417:

> "The true distinctinn is between the delegation of power to make the law which necessarily involves a discretion as to what it shall be and conferring authority or discretion as to its execution. to be exercised under and in pursuance of the Law. Objection may be taken to the former but not to the latter."

If we apply this test it cannot be denied that by virtue of the impugned section 6 (2) of the Act, the legislature delegated the power to make law necessarily involving a discretion as to what should be the rate of the maximum rent payable by a tenant. It can in no sense be said that section 6 (2) conferred authority or discretion as to execution of the legislative policy to be exercised under and in pursuance of the Law. It is one thing if the Legislature had said "Well, we fix the maximum rent at 1/3rd of crop and empower yon to reduce the rate of rent under certain circumstances, say not lower than 1/10th or 1/20th" and quite another thing if the Legislature says "we fix the maximum rent at 1/3rd of crop, but you may fix a lower rate of maximum rent to whatever limit you choose." In the former case it can be said that the Legislature applied its mind since it set down a limit, while in the latter case there is total absence of auy legislatve will. Quoting the passage from the judgment of Chagla C. J. which I have quoted above in para 23, Mahajan J. observes at page 413 as foltows:

" It seems to me that the above observations are based on a construction of sections 3 and 4 of the Act which these sections cannot legitimately bear! As already observed, the Legislature set up a Civil Court for Greater Bombay and decided that to start with, it will have pecuniary jurisdiction upto Rs. 10,000 -. It also decided at the same time that it would also have jurisdiction upto Rs, 25,000 - as soon as the circumstances necessitate it."

These observations clearly point out from what angle Their Lordships of the Supreme Court have looked at the judgment of Chagla C. J. They say that the Legislature had defined the limit of the jurisdiction of the Court in unmistakable terms, and therefore the policy of the Legislature was clear. If we apply these observations, and read section 4 of the Bombay City Civil Court Act conversely, that is to say if without defining the limit of Rs. 25,000/– the Legislature had left it to the discretion of the Provincial Government, then certainly it would have been objectionable and that is exactly what has happened in the case of Section 6 (2) of the Tenancy Act. The observations of Das J. on page 432 are to the same effect. On all these considerations, the conclusion is irresistible that subsection 2 of Section 6 of the Tenancy Act is ultra vires the Legislature and it is submitted the impugned notification issued under a void section is also void.

26. Now assuming that Section 6 (2) of the Tenancy Act is intra vires, the further question is whether the impugned notification is within the scope of the authority granted under Section 6 (2) of the Act. Mr. Shanbhag submits the following grounds in support of his arguments that the notification is invalid;

i. that Section 6 (2) empowers the executive to issue only one notificaion and not series of notifications;

ii. secondly such notification must extend only to " lands situate in any particular area " only and not generally nor to " particular areas " used in the plural;

iii. thirdly the use of the word ' fix ' in Section 6 (2) cannotes the application of a judicial mind before issuing notification and it cannot be an arbitrary determination;

iv. the use of the words ' on any other suitable basis ' occurring at the end of rhe sub-section (2) suggest that the fixation of the lower rate of maximum rent for any particular area also must be on some basis;

v. that it was incumbent upon the Government to state the basis on which the notification was issued,

27. These objections appear to be well-founded, when we compare this provision with the one included in the repealed Act of 1939. Of course it is a general principle that previous statutes are usually not admissible in interpreting an enactment unless where the previous statute is in 'pari matoria' when they refer to the same subject-matter.

" In coming to a determination of a particular word in a particular Act of Parliament it is permissible to consider two points, i. the external evidence derived from the extraneous circumstances such as previous legislation and decided case, ii, the internal evidence derived from the Act itself," Henrietta vs A,G, for Canada, A,I,R, 1930 P,C, 120(121),

I, therefore, think I can usefully compare a similar provision in the previous Act to determine the intention of the Legislators. In Bombay Act XXIX of 1939 section 15 provides:

(1) The provincial Government may *from time to time* by notification in the Official Gazette fix the maximum rate of rent payable by tenants *for lands situated in sueh areas* as may be specified in the notification." (underlines [italics] mine)

In the impugned Saction 6 (2) of the present Act we will notice that the word ' *from time to time* ' are absent and for the words " lands situated in such areas " the words ' lands situate in any particular area " are substituted.

28. Now, the preamble to the Act No. LXVII of 1948 shows that it was necessary to amend the law which governed the relations of landlords and tenants of agricultural lands. That law was necessarily Act No. XXIX of 1939. So by putting section 6 (2) on the statute book the legislators were set down to amend an analogous provision in the previous Act. The substitution of the phrases and words noted down must therefore be intentional and deliberate when they dropped the words "from time to time". The legislators must have thought that they should not allow the Executive to issue notifications "from time to time" but only at one time. So, after enacting Section 6 (2) the legislature invited the Government to ditermine whether it wanted to add an exception to the general rule contained in section 6 (1) by one notification only. In issuing subsequent notifications, the Government has purported to exercise a power that was already spent. In my opinion, therefore, the absence of the words "from time to time" and substitution of the words "particular area" for "areas" in subsection 2, clearly show the intention of the legislature that they have very miserly allowed the executive power one opportunity to engraft an excepfion to the main section 6 (1) by prescribing another rate of maximum rent only for a partcular area. If the power to be exercised under section 6 (2) were to be treated as an exeption, then it is clear that an exception cannot be co-extensive with the rule nor can an exception seek to swallow the whole rule. In this sense we must hold that the power was to be exercised only once and in respect to 'a particular area' and not beyond. It is true that under Section 21 of the Bombay General Clauses Act whereby in any Bombay Act a power to issue notification is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions to add to, amend, vary or rescind any notification. But it must be remembered that this power under section 21 refers to the same notification and not to series of notificatons. When the State Government issued the first notification under section 6 (2) it could add to, alter or rescind that notification, but it could not issue a similar notification in respect of other particular area.

29. Now coming to the second point in respect of "particular area" we shall ascertain what the word "area" means. The word "area" has been explained in Webester's International Dictionery of the English Language, 1907 Edn., at page 79, Col III, as under:

> "Area- i. Any plane surface, as of the floor of a room or church or of the ground within an *enclosure* an open space in a building;
>
> ii. *The incolsed space* on which a building stands;
>
> .....
>
> iv. An extent of surface' a tract of the earth's surface; a region as, vast uncultivated areas.

It appears therefore from this definition that an area connotes a defined space denoted by boundaries. Such space must be a continuous space. One guntha of land in 'A' town may be an area. But one guntha in 'A' town and one guntha in 'B' town both being distinct cannot together be termed as one 'area'. But they will be ' areas' So, if under Section 6 (2) a notification includes lands in a particular area viz. 'A' town and also lands in 'B' town, the notification cannot be said to be in respect of lands in a ' particular area '. This fact is apparent when we read the notification itself. We will see that the Government was constrained to use the term "areas" instead of ' area '. It is, aherefore, clear that the Government has issued a notification in respect of 'areas' although it was authorised to issue a notification in respect of ' a particular area' only, When the Legislature has subsutituted a singular word 'area' in subsection (2) in place of 'areas' occurring in section 15 of the repealed

Act and not only that but it has further qualified the word 'area' with the word 'particular', we have to assume that the change is deliberate and hence we must strive to give a meaning to both the words. When we give a natural and plain meaning to the words 'particular area' we will see that Government was authorised to issue a notification in respect of only a 'particular area' and not in respect of areas' as it has purported to do. The change being deliberate, with the best of intentions and attempts to hold the notification valid, I am unable to do so as it clearly goes beyond the scope of section 6 (2).

30. Mr. Shanbhag next urges that under section 6 (2) it is incumbent upon the State Government to satisfy itself that there is some basis or other suitable basis and therefore the notification must be supported by reasons. It is true that the legislature required the Government to issue notification on some or other suitable basis and not arbitrarily. An attempt was made on behalf of the defendant to split up section 6 (2) into two parts viz. i. that the Government could issue notification in respect of a particular area without consideration of any reasons or basis; ii. alternatively it could issue notification for the whole area of the Bombay State provided that there are suitable basis. I am unable to accept this artificial distinction. The section has to be read as a whole and a consistent meaning has to be given to the provision as a whole. However, although Mr. Shanbhag states that there ought to be reasonable grounds or suitable basis as a condition precedent to the issue of the notification, there is no warrant for saying that the Government had no such reasonable grounds or suitable basis when they issued the notification. Mr. Shanbhag has not been able to point out any provision whereby the Government was under obligation to state the reasons in the body of the notification itself. The Government may have their reasons of suitable basis in their own files. Mr. Shanbhag relies on the ruling reported in Emperor Vs. Keshav Gokhale, 47B, L,R, 42 (F.B.,) It is a case under rule 26 of the Defence of India Rules. It was held therein that where on a perusal of order passed under Rule 26 of the Defence of India Rules, 1939, it becomes clear that the authority or officer making the order has not applied its or his mind as required by these rules the order is invalid. On the authority of this ruling Mr. Shanbhag contends that when Section 6 (2) requires the Government to issue notification under section 6 (2) only on a suitable basis it was incumbent on the Government that the suitable basis must be apparent on the face of the notification itself. The Court is entitled to look into and inquire whether the notification was issued on suitable basis as required by section 6 (2) and the Court must be satisfied on the face of the notification itself that it was issued in terms of section 6 (2) on suitable basis,

31. Apparently it appears so. But it must be noted that there is a world of difference between Rule 26 of the Defence of India Rules and Section 6 (2) of the Tenancy Act. Rule 26 required that the Central or Provincial Government must be satisfied of a particular requirement. Exfacie the satisfaction contemplated by this Rule is satisfaction of a judicial mind. Under Section 6 (2) it is not necessary that the Government must be satisfied in a judicial manner. If there are in the opinion of the Government suitable grounds, that fact is sufficient to enable the Government to issue the notification. We cannot read something in the section where it is not. All that section 6 (2) requires is that Government may fix lower rate of maximum rent on suitable basis, What is suitable basis in the opinion of the Government need not necessarily be suitable in the opinion of the Court. The Court will be entitled to look into this fact only as to whether Government has acted on a suitable basis as the Government thinks fit. It is not therefore necessary to incorporate into the body

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of the notification that lower rate was fixed on suitable basis, because the only autho rity which is to determine the fitness of the suitable basis is the Government alone and not the Court. In this view of the law I overrule the points nos. 3 to 5 urged by Mr, Shanbhag. In the view I have taken on points nos. 1 and 2 above, I submit that in my opinion question no. 2 must be answered in the affirmative,

32. : In the result, therefore, I pass the following order,

ORDER.

1. This referring judgment shall be submitted to the Honourable High Court for decision on the following questions:

Question no 1: whether Sectin 6(2) of the Bombay Tenancy and Agricultural Lands Act, 1948 is invalid and inoperative being ultra vires?

Question no 2: If not whether the impugned notification is beyond the scope of Section 6(2) of the said Act and therefore invalid ?

as provided in proviso to Section 113 of the Code of Civil Procedure.

2. Record and proceedings in the suit shall accompany this referance,

16th June 1953.

W. V. Arbatti
Civil Judge,
Junior, Division,
Kumta,

[Shree Ramana Mudranalaya, Kumta.]

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No. 5491

Office of the
Government Pleader, High Court,
Bombay, 21st July 1953.

From

Shri H.M.Choksi,B.A.(Hons.)LL.B.,
Government Pleader, High Court.

To

The Remembrancer of Legal Affairs, Bombay.

Subject:- Civil Reference No.10 of 1953 in Small Cause Civil Suit No.46/53 of the Court of Civil Judge, J.D.Kumta. ... ...
Subraya Venkatraman Naik -VS- Narayan Masti Patgar. ... ...

Sir,

In connection with the aboye subject, I have the honour to forward herewith a notice with a request to accord a formal sanctio for the defence of the above reference.

Yours faithfully,

17824
23/7/53

V. V. Desai.

for Government Pleader, High Court.

L-D
22 JUL 1953

No. 15762/12 59 59

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 25th July 1953.

To

The Government Pleader,
High Court, Bombay.

Subject:- Civil Reference No. 10 of 1953 in Small Cause Civil Suit No. 46/53 of the Court of Civil Judge, J.D. Kumta.
Subraya Venkatraman Naik - Vs- Narayan Masti Patgar.

Sir,

With reference to your letter No. 5491 dated the 21st July 1953 on the subject noted above, I have the honour to state that sanction is accorded for the defence of the above mentioned reference. The notice received with your letter under reference is returned herewith.

You are requested to forward to this office the paper book will intime.

Yours faithfully,

Issued 25/7/53 of

for Remembrancer of Legal Affairs.

BM.
24.7.

Submitted for office use
25/7/53

Submitted after issue
the papers are with Solicitor

Vkr
27/7

Sol (M)

Solicitor (M)

A land lord named Subraya Naik had filed a Suit against his tenant Narayan Patgar for recovering Rs 32-10-4 for arrears of rent of certain lands which had been let out to the deft under a Rent Note. The land lord claimed the rent on the basis of 1/ 3rd of the produce or its price This claim was in conflict with the Notification issued by the Govt of Bombay in December 1952 under Sect 6(2) of the Bombay Tenancy and Agricultural lands Act fixing the maximum rent, which a Land Lord could recover from his tenant, at 1/6th of the produce. The plff alleged that this Notification was illegal and void. He contended that it was illegal and void because no reasons were given for fixing the maximum rent at 1/6th of the produce. He also contended that the power to issue a Notification under Sect 6(2) could be exercised only once and the Bombay Govt had already issued an earlier Notification fixing the maximum rent at 1/3rd of the produce. The power to issue a Notification under that Section was therefore exhaust and no second Notification could be legally issue under that Section. Further the plff contended that Section 6(2) of the above Act was ultra vires and void as it purports to delegate to the Provincial Govt the power to fix the maximum rent

The Suit was filed in the Court of the Civil Judge J.D. at Kumta. The Govt had not been made a party to it; nor was Notice issued to the Advocate General as required by the provisions of Order 27A, Civil Pro, Code, although the validi of an Act had been challenged.

The learned Judge upheld the above contentions of the plff and expressed the opinion that the

Notification of December 1952 was illegal and void, and also that Sect 6(2) of the Act was ultra vires. But as he could not finally declare an Act ultra vires he has made a Reference to the High Court and has referred the following two questions to the High Court for decision:-

1 Whether Sect 6(2) of the Bombay Tenancy and Agricultural lands Act, 1948, is invalid and inoperative, being ultra vires ?

2 If not, whether the impugned Notification is beyond the Scope of Sect 6(2) of the said Act, and therefore invalid.

The Reference will soon come up before the High Court for hearing, A private copy of the Judgment of the learned Judge has been obtained. The points raised in this case are of great importance to Govt The opinion expressed by the learned Judge on the above two questions does not appear to be sound

In view of the importance of the Case the Govt pleader High Court may be requested to engage the Advocate General for arguing the matter on behalf of the Govt..

S.L-L
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Secy.
10/8/53

Immediate.

No. 16874/E

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Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 12th August 1953.

To

The Government Pleader,
High Court, Bombay.

Subject:- The Bombay Tenancy and Agricultural Lands Act, 1948 - Declaration of section 6(2) ultra vires.

Sir,

With reference to the subject noted above, I have the honour to inform you that the Government desires that in view of the importance of the case, the Advocate General should be engaged to argue the matter on behalf of the Government. You are, therefore requested to give him the necessary instructions and to deliver a brief to him.

Yours faithfully,

for Remembrancer of Legal Affairs.

Shri J.A.G. prepare Brief 12-5-54

BM. 12/8.

11.8.

Submitted for signature 11/8

Await further development.

13/8

Supt 13.8.53

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Civil Reference No 10-1953 .

This Reference has been made to the High Court by the Civil Judge J.D. Kumta in small Cause Suit No 46-1953 pending in his Court. He has expressed the view that Sect. 6(2) of the Bombay Tenancy Act was ultra vires, and the Notification issu by the State of Bombay on 8-12-1952 under it fixing the maxi mum rent payable by a tenant to his land lord at 1/6th the total crop was also illegal and void. The State of Bombay has been served with Notice to appear in the matter. The Govt. has already engaged the Advocate General to argue the matter before their Lordhips of the High Court . The case is fixed for hearing on the 14th Sept-1953.

A brief Note has been prepared indicating the line of defence. The same is for approval. If approved a copy of it may be sent to the Advocate General, and another to the Govt. Pleader, High Court.

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IN THE HIGH COURT OF JUDICATURE, BOMBAY.

Civil Reference No.10-1953.

(Note by the Legal Department).

This is a Reference to the High Court under section 113, Civil Procedure Code by the Civil Judge, J.D., Kumta in connection with Small Cause Suit No. 46-1953 pending in his Court. In that suit a landlord named Subraya claimed arrears of rent amounting to Rs.32-10-0 from his tenant, Narayan Masti, for the year 1952-53, in respect of certain agricultural lands let out to the latter. The plaintiff calculated the annual rent on the basis of a 1/3rd share of the total produce or the price thereof, as required by the Notification issued by the Government of Bombay in 1950 under section 6(2) of the Bombay Tenancy and Act. The tenant had already paid Rs.39-4-0. But according to the plaintiff the tenant should have paid Rs.71-14-0. The plaintiff therefore filed this suit for recovering the balance. The plaintiff was aware that the above Notification of 1950 had been superseded by a later Notification issued by the State of Bombay on 8-12-1952 under which the maximum rent recoverable by a landlord from his tenant was fixed at 1/6th of the produce, or the price thereof. The plaintiff however contended that this Notification was illegal, inoperative, and void and he was not bound by it.

2. The defendant contended that the new Notification issued on 8-12-1952 was legal and valid, and the plaintiff could not claim rent in excess of the 1/6th share of the produce or the price thereof. On that basis the plaintiff had been over-paid, and the plaintiff's suit ought to be therefore dismissed.

3. The Court framed preliminary issues as regards the validity of the Notification of 8-12-1952 issued by the Government of Bombay reducing the maximum rent from 1/3rd to 1/6th of the total produce. The Court came to the conclusion that the above Notification, and

and also the provisions of section 6(2) of the Tenancy Act under which it was issued, were illegal, void and inoperative. But the Court had no power to make a declaration of the invalidity of any provision of an Enactment. The Court, therefore, made a Reference to the High Court as required under section 113 Civil Procedure Code.

4. The plaintiff's attack is directed both against the provisions of section 6(2) of the Tenancy Act, and the Notification issued under it by the Government of Bombay on 8-12-1952. The issues relating to these two questions were formulated as follows:-

1. Whether Sect. 6(2) of the Bombay Tenancy and Agricultural Lands Act, 1948, is invalid and inoperative, being ultra vires ?-
2. If not, whether the impugned Notification is beyond the scope of section 6(2) of the said Act, and therefore invalid ?

5. The view expressed by the Court is that section 6(2) is ultra vires as it amount to delegation of Legislative power to the Executive Government of the State of Bombay; and the Notification was void as it did not conform with the requirements of section 6(2) and also because the power to issue such Notification had already been exhausted.

6. The main question in this Reference therefore is whether the provisions of section 6(2) of the Bombay Tenancy Act amount to delegation of legislative powers to the Executive. The points raised with regard to the validity of the Notification of 8-12-1952 do not really fall under section 113 Civil Procedure Code. But they may be considered and disposed of more easily.

7. Section 6 of the Bombay Tenancy and Agricultural Lands Act, 1948, is worded as follows:-

6(1)....

"6(1) Notwithstanding any agreement, usage, decree, or order of a Court, or any Law, the maximum rent payable by a tenant for the lease of any land shall not, in the case of an irrigated land, exceed one fourth, and in the case of any other land exceed one third of the crop of such land, or its value, as determined in the prescribed manner.

(2) The Provincial Government may, by Notification in the Official Gazette, fix a lower rate of the maximum rent payable by the tenants of lands situate in any particular area, or may fix such rate on any other suitable basis as it thinks fit. "

8. The first clause prescribes certain maximum rates of rent and the second clause empowers the Provincial Government to fix lower rates of maximum rent for a specific area. The point for decision is whether the authority given to the Executive to fix a lower rate of maximum rent for a particular area amount to delegation of Legislative power to the Executive.

9. It is not disputed that the Provincial Legislature had the power and authority to pass a law regulating the Rents of Agricultural lands. The Government of India Act, 1935, was in operation when the Bombay Tenancy and Agricultural Lands Act was passed. Entry No.21 of the Provincial List covers the subject of "land" and matters relating to land including the "collection of Rents". The Legislature was perfectly competent to fix the maximum rates of rent in relation to particular kinds of agricultural lands. It is however urged that the Legislature had no right or authority to transfer the power to fix the rent to the Executive Government.

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10. The subject of delegation of legislative functions is exhaustively dealt with by the Supreme Court in Special Reference No.1 of 1951 reported at

The conclusions of the Court may be summarised as follows:-

1. The legislature must normally discharge its primary legislative function itself and not through others.
2. Having sovereign powers to legislate within a certain sphere, the legislature is free to legislate within that sphere in any way which appears to it to be the best way to give effect to its intention and policy. It may utilise any outside agency to any extent it finds necessary for doing things which it is unable to do itself, or finds it inconvenient to do. It can do everything necessary for the full and effective exercise of its power to legislate.
3. It cannot abdicate its legislative function. While entrusting power to an outside agency it must see that such agency acts as a subordinate authority and does not become a parallel legislature.
4. There are only two main checks on the power of the Legislature to delegate, these being its good sense, and the principle that it should not cross the line beyond which delegation amount to abdication and self effacement.

(Per Fazal Ali J.)

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11. The provisions of section 6(2) of the Act clearly fall within the principle enunciated in the second clause above. The Legislature had declared its policy of controlling the rents payable by tenants. It went further and fixed a maximum limit beyond which no landlord can charge or recover rent. But the Legislature was conscious that conditions varied from District to District and from time to time within the same District. The Legislature therefore gave a discretion to the State Executive to fix lower rates of rent in specific areas as may be necessary from time to time in the interest of both landlords and tenants. The conditions obtaining in the Districts from time to time is a matter of detail which it would not be possible for the Legislature to study from day to day. But the Legislature had exercised its will after applying its mind to the problem and had fixed a maximum limit beyond which rents should not be charged. Then the Legislature gave power to the State Government to fix a lower limit from time to time, as may be necessary, having regard to the special conditions prevailing in any particular area. In this connection it must be noted that the

State...

State Government is not given the absolute power to fix any rent it liked, in any given area. The maximum is already fixed and the only authority given to the State is to reduce that maximum with reference to a particular area. The criticism of the learned Judge that the Legislature had given a "blank cheque" to the State Government in the matter of fixing the rent is not correct. The power given to the State is circumscribed by the fact that the rent cannot exceed a certain limit under any circumstances.

12. The main argument urged for the applicant is that the Legislature had not fixed a minimum limit, along with a maximum limit, and therefore the State Government has the power to reduce the rent to vanishing point, and that power is likely to be used to the detriment of the landlord class. There is hardly any substance in this criticism. It must be assumed that the State Government will exercise the powers in a reasonable manner having regard to the interest of both landlords and tenants. The omission by

the...

the legislature to fix a minimum limit for rent to be charged by the land lord cannot vitiate the legislation. The power to fix the rent at any lower level within the maximum prescribed by the legislature is a limited power, and it is derived from the legislature itself. Such a provision is in the nature of "subordinate legislation" referred to in the Judgment of Kania CJ. in the Supreme Court Judgment. The legislature had declared the policy of the Law, and also fixed the legal principles which are to control the situation. Then an administrative Body is invested with the power to ascertain the facts and conditionsto which the Policy and the principles are to be applied. What is delegated to the State Government is only the authority and discretion to execute that policy, and those principles, in the light of the special conditions prevailing from time to time in any particular area. This discretion is to be exercised under, and in pursuance of, the Law. See Basu's Constitutional Law, p.630.

13. There is therefore no breach of the Legislative Trust" or the "Constitutional Trust" inveted in the Bombay Legislature. There is also no "Legislative Indolence" on the part of that body. That inference cannot be drawn from the omision to fix a minimum limit. Such a limit cannot be fixed merely on abstract considerations apart from the circumstances

and conditions prevailing in any particular area. Nor is it necessary in law to fix such a lower limit by Statute. The matter may be left to the good sense of the State Government. The State Government is responsible to the Legislature and if the former does anything which conflicts with the principles and policy laid down by the later the constitutional remedy is open and available for removing that executive from office.

14. The view expressed by the learned Judge that the power to issue Notifications did not amount to a power likely to fill in administrative details, but that it amounted to an "encroachment" upon the powers of the Legislature "so as to eclipse its legislative function" is hardly proper or justifiable. The Judgment of the Supreme Court in Reference No. 1 of 1951, shows that the powers of the legislature to delegate certain functions to any other body are so wide that such delegation is valid so long as it does not amount to clear abdication of the legislative function on the part of that legislature.

15. On page 22 of the paper Book the learned Judge had referred to the case of Jatindranath vs. The Province of Behar (A.I.R.949 F.C. page 175) and has declared that the power to modify an Act of the Legislature, without any limitation on the extent of the power of modification, is a legislative power, and it cannot be allowed to be exercised by any other body.

The learned Judge holds that Clause (2) of Section 6 gives an unlimited power to the State Government to modify the provisions of clause No.1 of that section. This view is clearly wrong. Clause 2 does not confer an unrestricted or absolute power on the State Government. The only power conferred is the power to fix a new scale of rents, subject however to the maximum limit specified in clause No.1. There is no unlimited right of modification.

16. The decision in 53 Bom. L. R. 402, is clearly in favour of the Government. It was held in that case that the legislature had laid down the policy and expressed its will, and only the time and the circumstances were left to be determined by the State Government. The same principle would apply here. The legislature had laid down the policy and expressed its will that rents shall not exceed a particular limit.

The.....

The adjustment of the rents, subject to that limit, was left to the discretion of the State Government according to the circumstances of particular areas. In view of the varying circumstances and conditions from District to District it would be impossible, and in law unnecessary, for the legislature to fix a minimum limit for the scale of rents. That matter is left to the good sense of the State Government, subject, however to the general control of the Legislature under the Constituion of India, or the Government of India, or the Government of India Act 1935. Section 6 (2) of the Act therefore seems to be quite legal and valid and the view taken by the learned judge that it is ultra vires cannot be upheld.

17. There are many Acts and Enactments which leave to the State Government the determination of scales of fees or taxes. For instance section 25 of .....

the Bombay Money Lenders Act gives power to the State Government to fix rates of interest in particular classes of transactions. No maximum or minimum limit is fixed by the section. For similar other provisions see

18. Coming to the second question about the legality of the Notification issued by the Government on 8-12-1952 it will be necessary to note certain facts. The State Government had by previous Notifications fixed the scale of rents in particular areas. In general the scale was that in the case of irrigated lands the rent should be 1/4th and in the case of other lands it should be 1/3rd of the total crop. In 1952 famine conditions prevailed in many areas and it was thought necessary to modify the scale of rents in such areas. The First Notification was therefore issued on October 17, 1952. It fixes a new basis for determining the rent in certain areas specified in Schedule I, and it also provides that in areas mentioned in Schedule II the rent shall not exceed 1/6th of the crop. We are not concerned with this Notification in this case. The second Notification was issued on the 5th November 1952 and it prescribes the limit of 1/6th for rents payable in the areas mentioned in the Schedule. We are also not concerned with this Notification. The third Notification was issued on the 8th December 1952 and it prescribes the limit of 1/6th of the crop in respect of rents payable in the areas specified in the Schedule. ~~xxxxxxxxx~~ This Schedule includes Kanara District, and the present case comes from that District. It is thus

clear.....

clear that there were three Notifications fixing the rent at 1/6th of the total crop in respect of specified areas.

19. It seems that five objections were urged against this Notification, and they are set out at page 28 of the paper book. Out of these the Judge accepted only the first two, and dismissed the other three. We may, therefore, deal ~~with~~ only with the first two objections. The first objection is that section 6(1) empowers the State Government to issue only ~~the~~ one Notification and not a series of Notifications. In this connection reliance is placed on the fact that in the corresponding section of the Bombay Tenancy Act of 1939 the State Government was empowered "from time to time" to issue such Notifications, and that the phrase is omitted in the present section 6(1). It is urged that the omission of that phrase has the meaning that the legislature did not wish to invest the State Government with the power to issue more than one notification. This reference is hardly justified. The above phrase was omitted as it was quite superfluous and unnecessary in view of theprovisions of sec.14 of the Bombay General Clauses Act. Section 14 provides that when by any enactment any power is conferred on the Government that power may be exercised from time to time as occasion arises. ~~This~~ This provision was not pointed out to the lower Court. It is a complete answer to the first objection. The lower court referred to section 21 of the same Act which says that the power to issue a Notification would also include the power to amend, or modify, or add to, the same. This undoubtedly refers to the same Notification. But sec.21 cannot control or

overrid̄e the provisions of section 14 of the same Act which lays down the general principle that the powers conferred on the Government may be exercised as often as they are necessary.

20. The second objection is that the Notification to be issued must relate to a particular area and not to different areas. It is urged that the territories to which the Notification is made applicable include different areas, and hence the Notificatinn is invalid. There is no substance in this argument. Section 6(2) refers undoubtedly to "any particular area". But quite clearly that area may be quite large. There are no limits to the extent of territory to be included in that area. The Districts and places indicated in the Schedule to the Notification constitute one area. It is demonstrably a continuous area denoted by specific boundaries. The area is one and not separated from one another.

21. It may also be urged that under the general principles of inter_pretation a singular includes a plural. The word "Area" in sec.6(2) may be construed to mean and to include "areas". See in this connection the provisions of sec.13(b) of the Bombay General Clauses Act,1904.

22. It is thus clear that neither the provisions of section 6(2), nor the Notification dated 8-12-1952 issued by the Bombay Government under it can be held to be illegal or void. The reference may be disposed of accordingly.

81 81

Civil Reference No 10-1953

Note by the Legal Department

This is a Reference to the High Court under Sect 113 , Civil Pro. Code by the Civil Judge J.D. Kumta in connection with Small Cause Suit No 46-1953 pending in his Court. In that suit a land lord named Subraya claimed arrears of rent amounting to Rs 32-10-0 from his tenant, Narayan Masti, for the year 1952-53, in respect of certain agricultural lands let out to the latter. The plff calculated the annual rent on the basis of a 1/ 3rd share of the total produce or the price thereof , as required by the Notification issued by the Govt of Bombay in 1950 under Sect 6(2) of the Bombay Tenancy Act. The tenant had already paid Rs 39-4-0. But according to the plff the tenant should have paid Rs 71-14-0 . The plff therefore filed this suit for recovering the balance. The plff was aware that the above Notification of 1950 had been superseded by a later Notification issued by the State of Bombay on 8-12-1952 under which the maximum rent recoverable by a land lord from his tenant was fixed at 1/6th of the produce, or the price thereof. The plff however contended that this Notification was illegal, inoperative and void, and he was not bound by it.

2 The Deft contended that the new Notification issued on 8-12-1952 was legal and valid, and the plff could not claim rent in excess of the 1/6th share of the produce or the price thereof. On that basis the plff had been over-paid , and the plff's suit ought to be therefore dismissed.

3 The Court framed preliminary issues as regards the validity of the Notification of 8-12-1952 issued by the Govt of Bombay reducing the maximum rent from 1/3rd to 1/6th of the total produce . The Court came to the con-

conclusion that the above Notification, and also the provisions of Sect 6(2) of the Tenancy Act under which it was issued, were illegal, void and inoperative. But the Court had no power to make a declaration of the invalidity of any provision of an Enactment. The Court therefore made a Reference to the High Court as required under Sect 113 Civil Pro. Code.

4 The plffs attack is directed both against the provisions of Sect 6(2) of the Tenancy Act, and the Notification issued under it by the Govt of Bombay on 8-12-1952. The issues relating to these two questions were formulated as follows :-

1 Whether Sect 6(2) of the Bombay Tenancy and Agricultural Lands Act, 1948, is invalid and inoperative, being ultra vires ?

2 If not, whether the impugned Notification is beyond the scope of Sect 6(2) of the said Act and therefore invalid?

5 The view expressed by the Court is that Sect 6(2) is ultra vires as it amounts to delegation of Legislative power to the Executive Govt. of the State of Bombay; and the Notification was void as it did not conform with the requirements of sect 6(2), and also because the power to issue such Notifications had already been exhausted.

6 The main question in this Reference therefore is whether the provisions of Sect 6(2) of the Bombay Tenancy Act amount to delegation of legislative powers to the Executive. The points raised with regard to the validity of the Notification of 8-12-1952 do not really fall under Sect 113 Civil Pro. Code. But they may be considered and disposed of more easily.

Section 6 of the B.T. and A.L. Act 1948 is worded as follows:-

6(1) Notwithstanding any agreement, usage, decree, or order of a Court, or any Law, the maximum rent payble by a tenant for the lease of any land shall not, in the case of an irrigated land, exceed one fourth, and in the case of any other land exceeed one third of the crop of such land or its value, as determined in the prescribed manner.

(2) The Provincial Govt may, by Notification in the Offiçaal Gazettee, fix a lower rate of the maximum rent payable by the tenants of lands situate in any particular area, or may fix such rate on any other suitable basis as it thinks fit.

7 The first clause prescribes certain maximum rates of rent and

the second clause empowers the Provincial Govt to fix lower rates of maximum rent for a specific area . The point for decision is whether the authority given to the Executive to fix a lower rates of maximum rent for a particular area amounts to delegation of Legislative power to the Executive.

9 It is not disputed that the Provincial Legislature had the power and authority to pass a law regulating the Rents of Agricultural lands The Govt of India Act, 1935 was in operation when the B.T. and A.L. Act was passed. Entry No 21 of the Provincial List covers the subject of "land" and matters relating to land including the "collectio of Rents ". The Legislature was perfectly compe tent to fix the maximum rates of rent in relation to particular kinds of agricultural lands. It is however urged that the legislature had no right or authority to transfer the power to fix the ~~maximum~~ rent to the Executive Govt.

10 The subject of delagation of legislative functions is exhaustively dealt with by the Supreme Court i n Special Reference No 1 of 1951 reported at

The conclusions of the Court may be summarised as follows :-

1 The legislature must normally discharge its primary legislative fuction itself and not through others.

2 Having sovereign powers to legialate within a certain sphere, the legislatu is free to legislate within that sphe in any way which appeass to it to be the best way to give effect to its intention and policy. It may utilise any outside agency to any extent it finds necessary for doing things which it is unable to do itself, or finds it inconvenient to do. It can do everything necessary for the full and effective exercise of its power to legislate.

3 It cannot abdicate its legialative fun- tion . While entrusting powwer to an outside agency it must see that such agency acts as a subordinate authority and does not become a parallel legis

lature

There are only two main checks on the power of the Legislature to delegate , these being its good sense, and the principle that it should not cross the line beyond which delegation amounts to abdication and self effacement.

(Per Fazal Ali J)

The provisions of Sect. 6(2) of the Act clearly fall within the principle enunciated in the second clause above. The Legislature had declared its policy of controlling the rents payable by tenants. It went furhher and fixed a maximum limit beyond which no land lord can charge or recover rent. But the legislature was conscious that conditions varied from District to District and from time to time within the same District. The legislature therefore gave a discretion to the State Executive to fix lower rates of rent in specific areas as may be necessary from time to time in the interest of land lords and tenants. The conditions obtaining in the Districts from time to time is a matter of detail which it would not be possible for the legislature to study from day to day. But the Legislature had exercised its will after applying its mind to the problem and had fixed a maximum limit beyond which rents should not be charged. Then the legislature gave the power to the State Govt to fix a lower limit from time to time, as may be necessary, having regard to the special conditions prevailing in any particular area. In this connection it must be noted that the State Govt. is not given the absolute power to fix any rent it ~~they~~ like in any given area. The maximum is already fixed and the only authority given to the state is to reduce that maximum with reference to a particular area. The criticism of the learned Judge that the Legislature had given a blank cheque to the State Govt in the matter of fixing the rent is not correct. The power given to the State is circumscribed by the fact that the rent cannot exceed a certain limit under any circumstances.

The main argument urged for the applicant is that the legislature had not fixed a minimum limit, along with a maximum limit, and therefore the State Govt has the power to reduce the rent to vanishing point , and that power is likely to be used to the detriment of the land lord class. There is hardly any substance in this criticism. It must be assumed that the State Govt. will exercise the powers in a reasonable manner having regard to the interest of both land lords and tenants. The omission of

the legislature to fix a minimum limit for rent to be charged by the land lord cannot vitiate the legislation. The power to fix the rent at any lower level within the maximum prescribed by the legislature is a limited power, and it is derived from the legislature itself. Such a provision is in the nature of " subordinate legislation " referred to in the Judgment of Kania CJ. in the Supreme Court Judgment. The legislature had declared the policy of the Law, and also fixed the legal principles which are to control the situation. Then an administrative Body is invested with the power to ascertain the facts and conditions to which the Policy and the principles are to be applied. What is delegated to the State Govt is only the authority and discretion to execute that policy, and those principles, in the light of the special conditions prevailing from time to time in any particular area. This discretion is to be exercised under, and in pursuance of, the Law . See Basus Constitutional Law, p. 630 /3 There is therefore no breach of the " Legislative Trust " or the "Constitutional Trust " inveted in the Bombay Legislature. There is also no " Legislative Indolence " on the part of that body . That inference cannot be drawn from the omision to fix a minimum limit. Such a limit cannot be fixed merely on abstract considerations apart from the circumstances and conditions prevailing in any particular area. Nor is it necessary/ to fix such a lower limit by Statute. The matter may be left to the good sense of the State Govt. The State Govt is responsible to the Legislature and if the former does anything which conflicts with the principles and policy laid down by the latter the constitutional remedy is open and available for removing that executive from office.

14 The view expressed by the learned Judge that the power to issue Notifications did not amount to a power to fill in administrative details , but that it amounted to an encroachment" upon the powers of the Legislature " so as to eclipse its legislative function " is hardly proper or justifiable . The Judgment of the Supreme Court in Reference No 1 of 1951 shows that the powers of the legislature to delegate certain functions to any other body are so wide that such delegation is valid so long as it does not amount to clear abdication of the legislative function on the part of that legislature .

15 On page 22 of the Paper Book the learned Judge had referred to the case of Jatindranath Vs, The Province of Behar (A.I.R. 1949 F.C. page 175) and has declared that the power to modify an Act of the Legislature, without any limitation on the extent of the power of modifi cation, is a legislative power, and it cannot be allowed to be exercised by any other body. The learned Judge holds that Clause (2) of Sect 6 gives an unlimited power to the State Govt to modify the provisions of Clause No 1 of that section. This view is clearly wrong. Clause 2 does not confer an unrestricted or absolute power on the State Govt. The only power conferred is the power to fix a new scale of rents, subject however to the maximum limit specified in Clause No 1. There is no unlimited right of modification

16 The Decision in 53 Bom.L.R. 402 is clearly in favour of the Govt. It was held that the initial act the legislature had laid down the policy and expressed its will , and only the time and the circumstances were left to be determined by the State Govt. The same principle would apply here. The legislature had laid down the policy and expressed its will that rents shall not exceed a particular limit. The adjustment of the rents , subject to that limit , was left to the discretion of the State Govt according to the circumstances of particular areas. In view of the varying circumstances and conditions from District to District it would be impossible, and in law unnecessary for the legislature to fix a minimum limit for the scale of rents. That matter is left to the good sense of the State Govt., subject however to the general control of the Legislature under the Constitution of India, or the Govt of Inda Act 1935.

Section 6(2) of the Act therefore seems to be quite legal and valid and the view taken by the learned Judge that it is ultra vires cannot be upheld.

17 There are many Acts and Enactments which leave to the State Govt the determination of scales of fees or taxes &. For instance Sect. 25 of

the Bombay Money Lenders Act gives power to the State Govt to fix rates of interest in particular classes of transactions. No maximum or minimum limit is fixed by the Section. For similar provisions see

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19 It seems that five objections were urged against this Notification, and they are set out at page 28 of the pape Book. Out of these the Judge accepted only the first two, and dismissed the other three . We may therefore deal wi only with the first two objections. The first objection is that sect6(1) empowers the State Govt to issue only one Notification and not

a series of Notifications. In this connection reliance is placed on the fact that in the corresponding Section/~~under~~ the Bombay Tenancy Act of 1939 the State Govt was empowered " from time to time " to issue such Notifications, and that phrase is omitted in the present sect. 6(1) . It is urged that the omission of that phrase has the meaning that the legislature did not wish to invest the State Govt with the powet to issue more than one notification. This inference is hardly justified. The above phrase was omitted as it was quite superfluous and unnecessary in view of the provisions of Sect 14 of the Bombay General Clauses Act. Sect. 14 provides that when by any enactment any power is conferred on the Govt. that power may be exercised from time to time as occasion arises. This provision was not pointed out to the lower Court. It is a complete answer to the first objection . The lower court referred to section 21 of the same Act which says that the power to issue a Notification would also include the power to amend or modify or add to the same. This undoubtedly refers to the same Notification. But section 21 cannot control or override the provisions of Sect 14 of the same Act which lays down the general principle that the powers confereeed on the Govt may be exercised as often as they are necessary

The second objection is that the Notification to be issued must relate to a particular area and not to different arears . It is urged that the territories to which the Notification is made applicable include different areas and hence the Notification is invalid. There is no substance in this argument. Sect. 6(2) refers undoubtedly to " any particular area" . But quite clearly that area may be quite large . There are no limits to the ~~inner~~ extent of territory to be included in that area. The Districts and places indicated in the schedule to the Notification constitute one area . It is demonstrably a continuous area denoted by specific boundaries . The area is one till territories not separated from one another.

It may also be urged that under the general principles of interpretation a singular includes a plural . The word "Area" may be construed to ~~refer to~~ mean and include "areas ". See in this connection the provisions of sec. 3(6) of the Bombay General Clauses Act, 1904

It is thus clear that neither the provisions of Sect 6(2), nor the Notification dated 8-12-1952 issued by the Bombay Govt under it can be held to be illegal or void. The reference may be disposed of accordingly.

URGENT:

No. 6646

89 89

IMMEDIATE

Office of the
Government Pleader, High Court, Bombay,
dated 27th August 1953.

From

Shri H.M.Choksi,B.A.(Hons.)LL.B.
Government Pleader, High Court.

1 4 9

To

The Remembrancer of Legal Affairs, Bombay.

L.D.
28 AUG 1953

Subject:- Civil Reference No.10/1953 in Small Cause ~~Court~~ civil Suit No.46/53 of the Court of Civil Judge, J.D.Kumta. ... ...

Sir,

With reference to your letter No.15762/E dated 25th July 1953, on the above subject, I have the honour to send herewith a paper book in the above matter with a request to send me your necessary instructions at an early date as the matter is fixed for final hearin on 31st August 1953.

Yours faithfully,

V. S. Desai

for Government Pleader, High Court.

21044
28/8/53
E

1952 Supreme Court Reports p. 883

91-94

No. 26008 1/E.

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), December 1953.

To

The Government Pleader,
High Court,
Bombay.

Subject:- Civil Reference No. 10/1953 in Small Cause Civil Suit No. 43/53 of the Court of Civil Judge, J.D. Kumta.

Sir,

With reference to your letter No. 6646 dated the 27th August 1953, on the above subject, I have the honour to return herewith the paperbook received from you with the above matter.

Yours faithfully,

for Remembrancer of Legal Affairs.

As the action on the matter is complete the paperbook may be returned to S. P. & H. C. F.
BM. 23.12.

9r

Subd. after nine

All these OPs may now be

filed in Misc Suits Kanara/53.

24/12

Sd/- [illegible]

Misc Suits Kanara/53

29/12/53

93 a

Correspondence.

DOCKET SHEET.

DD. Lib. —

Subject :- North Kanara Dist. Industrial Co-op. Bank Ltd. Honavar. — attachment of current account &c. —

File No. 26588

Legal Dept.

E. Branch

References :-

Date	To whom sent	Notes and instructions.
5/11/53	Shri Parsidam	Pl. see DS's note 21-R-1 Jr orders. 5/11 Sol(M) Please issue a telegram to Shri K.H. Purohit Bureau Reader Honavar saying that M.Dept. approves for renewal of patent-no. bearing No 50/53-54 approved. The Stores Deptt and internal Audit Deptt by offices (Nee 5-11

95 ~~95~~

EXPRESS STATE

Sub-Government Pleader

HONAVAR

No. 22454/13 Draft Application for removal of attachment in Darkhast No. 50 of 1953 is approved

SECLEX

O.C.
For Remembrancer of Legal Affairs.
Bombay Castle, 5th November 1953.

Land Rev 5/11

Submitted for signature
JK
5/11
Sol (M)

97 97

L.D.
R.I. No. 26588 dt. 5-11-53.

Submitted with reference to the D.D. note at page 1 ante.

The Department may be informed that the Sub Government Pleader, Honavar has been informed under this Office express telegram No. 22454/E dated the 5th November 1953 that application for removal of attachment in Darkhast No. 50 of 1950 is approved. The Department may be requested that papers at pp. 1-7 (C.S.) may be transferred to this Department after keeping the copies of the same.

The papers may be returned to the Department with the above note.

30/11

SR(H) 50. SRK 30/11

R. R. vs D. D No 24244/E dt 2.12.53.

Await return of hbs to DD

VK
3/12

Gupta
3/12

Immediate P.

OcA 2653 B 82579

3/11/53

No.P.327/2 of 1953
Office of the Joint Registrar
for Industrial Cooperatives
and Village Industries, B.S.
Poona, 2nd ~~October~~ Nov. 1953.

To

The Secretary to Government,
Development Department, Bombay.

Subject:- North Kanara District Industrial Cooperative Association, Ltd.Honavar - Attachment of current account of

Sir,

Please refer to Government Resolution, Revenue Department No.7726/45, dated the 26th February 1949, whereunder Government was pleased to grant to the North Kanara District Industrial Cooperative Association, Honavar a loan of Rs.25,000/- for its working.

2. According to one of the conditions on which the said loan was granted, Government has a first charge on the Association's existing and future assets.

3. One Shri. G.M. Bhat of Kadle Hebankeri, in Honavar taluka, has obtained a decree against the North Kanara District Industrial Cooperative Association, Honavar. In execution of this decree, the Honavar Civil Court attached the Associaton's balance in its current account amounting to Rs.1,443-13-0 in the Honavar Urban Cooperative Bank, Ltd.Honavar. As the Association has executed a mortgage deed in favour of Government, incorporating the conditions laid down in the Government Resolution, referred to above, Government has a first charge on the Association's assets.. Shri. Bhat cannot therefore claim priority for his dues in view of Government's first charge on the Association's assets.

4. At the instance of the Assistant Registrar, Cooperative Societies, Karwar, the Sub-Government Pleader Honavar was requested to appear on behalf of Government and request the Court not to hand over the amount of the Association attached by the Court, in satisfaction of the decree-holder's claim in view of the Government's prior claim to receive this amount. Accordingly Sub-Government Pleader Honavar appeared in the Court on behalf of Government and the case has been adjourned to 11-11-1953 to enable the Sub-Government pleader to file the petition.

5. Under Chapters X and XI of the law Officers' Rules, a draft of claim petition is to be approved by the Remembrancer of Legal Affairs, I therefore request that Government may please be moved to forward the Sub-Government Pleader, Honavar's draft claim petition (enclosed herewith) to the Remembrancer of Legal Affairs for necessary approval and with a request to give necessary instructions in the matter direct to Sub-Government Pleader, Honavar, before 11-11-53.

6. In the meanwhile, as required under chapter XII of the Law Officers' Rules, I am authorizing the Sub-Government Pleader, Honavar to appear before the Court on behalf of Government on 11-11-53 and if necessary instructions are not received from the Remembrancer of Legal Affairs, before that date, to get further postponement till orders of Government are received by him.

Yours faithfully,

O. C. signed by the
Jt. Registrar, I. C.

For Joint Registrar for
Industrial Cooperatives and
Village Industries, Poona.

d.b.j./2-11-53

From,

L.H.Prabhu,B.A.LL.B,
Sub-Government Pleader, Honawar

To,

The Assistant Registrar,
Cooperative Societies, N.Kanara, Karwar.

Sir,

Your letter No.P-148/2 of 1953 dated 10-10-1953.

The darkast No.50/1953 of Honawar Civil Judge Cour in which the amount referred to by you in your xxxx said letter was attached, came before the Court of Civil Judge Honawar Yesterd 12-10-1953. Your said letter was also received by me yesterday onl

On the strength of your letter I appeared in that darkast on behalf of the Government and moved the Court to adjourn the --- hearing as I proposed to put in claim petition as advised by you.

Under Chapter XII rule No.172 of the Law Officer's rules and rules for the conduct of the legal affairs of Government, it i open to the Collector or other Officer to intervene and institute a miscellanious proceedings like the present one.

As per rules contained in Chapter X and XI of said rules the pleadings are to be submitted to the Legal Remembracer to the Government of Bombay for being approved or revised. I have herewit submitted a draft of the claim petition to be filed for the sanction of the Legal Remebrancer.

The Darkast No.50/1953 stands adjurned to 11-11-1953 before which date the claim petition is to be filed.

It is also necessary that my appointment to put in claim petition needs to be made by an order of either of Collector Kanara or the Head of your Department. A copy of the same is to b sent to Civil Judge Honawar for his information.

It is therefore prayed that the needful may be done in the matter and the approval of Legal Remembrancer to the enclosed --- draft may be caused to be sent to me.

Yours faithfully

L.H.Prabhu
Sub. Govt Pleader, Honawar

Honawar
13-10-1953
14

Encl. --

45366 Q 16/10

OFFICE OF THE ASSTT. REGISTRAR
CO-OPERATIVE SOCIETIES,
N. KANARA

Karwar, the 16 OCT 1953 195

(-19-)

In the Court of the Civil Judge at Honawar.

Misc application No. 1953

In O.Dar.No. 50/1953

163 (2)

The Governor of Bombay ----- Applicant

Versus.

1. Ganapathi Mahableshwar Bhat of Kadle Hebankeri in Honawar Taluka

Opponents

2. The District Industrial Cooperative Association Ltd., Honawar

The Applicant submits this application under order 21 rule 52 read with rule 58 of C.P.C. as under:-

1. Opponent No.1 purports to have obtained a money decree against Opponent No.2 at O.S.No.330/52 of Honawar Civil Judge Court. In execution of that decree at original Darkast No.50 of 1953 the decreeholder Opponent No.1 has attached under O.21rule 52, a sum of Rs.1435-2-9 plus interest lying in the Honawar Urban Cooperative Bank Ltd., to the credit of Opponent No.2 in its current account with the Bank. The said amount with interest aggregating a sum of Rs.1443-13-0 is now lying in this Court - the same having been credited in this Court by the Honawar Urban Cooperative Bank Ltd., in compliance with an order of attachment seved on them in the above said darkast by this Court.

2. By a Mortgage deed dated 30-10-1949 executed by Opponent No.2 in favour of the Applicant; opponent No.2 has created a first charge and a floating charge for a sum of Rs.25000/- advanced by applicant to Opponent No.2 on all its assets then existing with Opponent No.2 and later on to be owned and possessed by Opponent No.2 in future.

3. Under the terms of the mortgage the amount due to the Applicant under the mortgage becomes immediately payable, if a distress or execution is levied or enforced upon any part of the mortgaged properties or A Receiver thereof be appointed.

4. The amount now due under the mortgage to the applicant from the Opponent No.2 comes to Rs.16992-14-0 plus interest Rs.1350/- in all 18342-14-0 and such further interest as may acrue due till the date of actual recovery. Therefore cause of action to recover the same acrued due to this applicant as soon as Opponent No.1 has filed this execution and levied the attachment.

5. The Applicant has the first charge on the amount now lying in Court and is entitled to receive the same in full, in part satisfaction of the applicants dues from Opponent No.2.

6. The cause of action for this application arose as soon as Opponent No.1 filed the darkast and levied attachment on 14-2-1953.

7. IT is therefore prayed:-

I) That this Court may be pleased to determine and declare the priority of the applicant to receive the entire amount now lying in Court, over any claim of this Opponent No.2 or any other creditor of Opponent No.2 who may chose to intervene in these proceedings or by any other proceedings;

II) That the attachment levied by this Court in the above named darkast be raised and the amount under attachment be released from the attachment;

III) That the further process of the darkast No.50/1953 be stayed till the decision and disposal of this application

P.T.O.

IV) That the costs of ~~the~~ applicant in this proceeding be awarded form Opponent No.1 to this applicant.

V) That such other orders as may be deemed necessary in the ends of justice be passed.

Dated

I, L.H.Prabhu, Sub-Government Pleader, Honawar do hereby veryfy that what is stated above in this application is true according to information and instructions received by me, which I believe to be true. Signed and veryfied at Honawar on

105 107

North Kanara District Industrial Cooperative Association, Limited, Honavar.
Grant of loan to

Government of Bombay
Revenue Department
Resolution No.7726/45
Bombay Castle, 26th February 1949.

Read:- Letter from the Chairman, North Kanara District Industrial Cooperative Assocation Limited dated the 17th April 1947.

2. Endorsement from the Joint Registrar for Industrial Cooperatives andVillage Industries,No.P.327/2 dated the 19th March 1948.

3. Endorsement from the Joint Registrar for Industrial Cooperatives and Village Industries,No.P.372/2 dated the 29th January 1949.

Resolution:- Government is pleased to sanction a loan of Rs.25,000/- to the North Kanara District Industrial Cooperative Association,Limited Honavar, District Kanara for the following purposes.

1.) Wholesale purchase of raw-materials required by its members:

2.) Outright purchase of finished products of members;

3.) Advances on the pledge of raw materials and finished goods;

4.) Opening of a sales shop for exhibition and marketing the articles manufactured by the members.

2. Loan is sanctioned subject to the following conditions:-

i) The loan should carry an interest at the rate of 3 % per annum for the first two years and at 4 % for the rest of the period and be repayable in 5 equal instalments, the first instalment to begin two years after the actual disbursement of the amount.

ii) Government will have charge on the existing and future assets of the Association and also of member bodies which would be financed by the Association;

iii) The Association should allow credit to its members as per provisions made in its bye laws and in accordance with the rules approved by the Deputy Registrar, Cooperative Societies, Belgaum in this behalf and should not make cash advances to affiliated societies.

3. The Joint Registrar for Industrial Cooperatives and Village Industries should draft an agreement in terms of the conditions specified above and submit to Government for approval before it is executed.

4. The charge should be debited to "R-Loans and Advances by Provinccial Government-Class V-Miscellaneous Loans and Advances Other Miscellaneous Loans ". The loan should be disbursed during the next financial year and the expenditure included in the revised estimates for the next year.

By order of the Governor of Bombay.

Sd/-
Deputy Secretary to Govt

copy
d.b.d./2-11-53

E

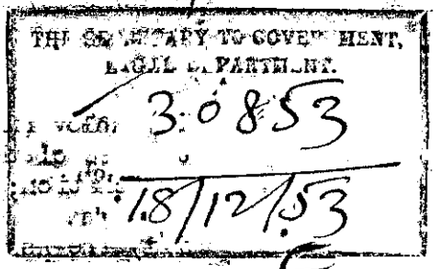
No. OCA 2653/67061-B.

Political Intelligence Department
Secretariat (Annexe)
Bombay, No. II 16th December 1953.

Transferred to this Legal Department
accordingly

By order of the Governor of Bombay

9/12/53
Assistant Secretary to the Government
of Bombay Development Department.



E

101 to 7

DA

COA 2653/62 5738

Submitted

2. The J.R. for D.C. N.D. explains the facts of the case in respect of attachment of current account of the North Kanara Dist. Indl. Co-op Assoc Ltd., the ~~R.D.A.~~ L.D. may be requested to affirm the draft claim, as proposed by the Sub-Asst Pleader, Honavar, and to issue the necessary instructions to him in this behalf, in the case after, on behalf of Govt., in the case on 11-11-53.

4.11

4-11-53.

L.D.
4 - NOV 1953

Sent to L.D. 4th Nov. 1953

THE SECRETARIAT GOVERNMENT
LEGAL DEPARTMENT
File No 26588
Date 5/11/53

3/12

CD 109/09

RI No 26588 ✓ 5.11.53

Submitted with reference to the D.D note at P 1 ante.

The Dept. may be informed that the Sub-Asst. Master, Honavar has been informed under this office express telegram No 22454/E ✓ 5.11.53 that application for removal of attachment in Sanskrit No 50 of 1950 is approved. The Dept. may be requested to transform their papers at Pt 1-7 (C.S) may be transformed to this Dept. after keeping the copies of the same.

The papers may be returned to the Dept. with the above note

30/11

Sol (M) 3.12.53

U.R to D.D No 241244/E ✓ 2.12.53

DEVELOPMENT DEPARTMENT
OCA 2653
Regd No. B 6706/
Date 2/12/53.

110/12

DD 4

(BBR)
p1 A

Please see the office note, at H-1-53.

2. Sheets/papers may be transferred to else by them & MD 1-
the I-D. after keeping their copies. the entire
Case/ work/ was over.
8/1/13

BFU 7/p 8/c

9/1/2

Submitted

AS

The Deptt. has forwarded
these pps. as requested vide Leaf.
These pps. along with pps
kept below may be filed/objected in
Misc. Suit/ PK Kanara/53

Misc. Suits Kanara/53
2/2/24

DD
after keeping
copies of
pages 1-8/c
in the case
of p 8/c
10/12/13

No
1/2
Sol (M) 1-2

NO. 1318

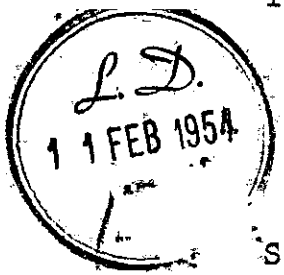
Office of the
Government Pleader, High Court
Bombay, 11th February 1954.

From

Shri H.M.Choksi,B.A.(Hons.)LL.B.,
Government Pleader, High Court.

To

The Remembrancer of Legal Affairs, Bombay.



Subject:- Civil Reference No. 5 of 1954
(In the matter of the Conviction of Mr. Y.D.Yennemadi a pleader in the District Kanara at Karwar. ... ...)

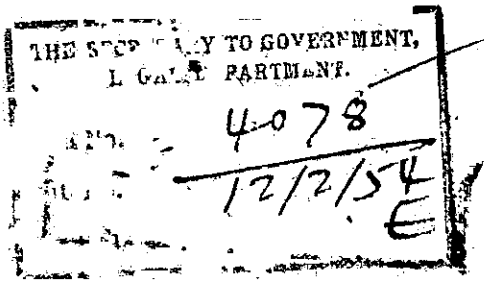
Sir,

With reference to the subject noted above, I have the honour to forward herewith a notice served on me by the High Court, - with a request to accord a formal sanction for the defence of above Reference at an early date. The paper book in the above reference will be sent to you as soon as it is prepared by the Registrar's Office.

Yours faithfully,

V. J Desai

for Government Pleader, High Court.



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IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Appellate Side, Civil Jurisdiction

Civil Reference No.5 of 1954.
(Under Section 24 of the Bombay Pleaders Act 17 of 1920)

In the matter of the Conviction of Mr.Y.D.Yennemadi a pleader in the District Kanara at Karwar.

From

The Deputy Registrar,
High Court, Appellate Side, Bombay.

To

The Government Pleader,
High Court,Bombay.

No. 422 of 1954.
Date 7th February 1954.

Sir,

Whereas the Sessions Judge, Kanara, has reported to this Honourable High Court, with a copy of his Judgment that Mr.V.D. Yennemadi, a pleader in the District Court, Kanara, has been convicted under Section 85(1) of the Bombay Prohibition Act,1949 (Criminal Appeal No.43 of 1953 on the Sessions' file) and whereas the same having been registered as Civil Reference No.5 of 1954, this Court has on 1-2-54 ordered notice to issue to the opponent to show cause why disciplinary action should not be taken against him.

I have the honour to inform you that the hearing of the said Civil Reference No.5 of 1954 will take place on the 22nd February 1954 or on any subsequent day which to this Court may seem convenient and that if no appearance is made on your behalf it will be heard and determined in your absence.

Notice recrd. on -2-1954.

V. J Desai
for Govt.Pleader,High Court.

Yours faithfully,

For Deputy Registrar.

NPJ/-

115 -45

No. 5215/2
Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 23rd February 1954.

To

The Government Pleader, High Court, Bombay.

Subject: Civil Reference No.5 of 1954.
(In the matter of the Conviction of Mr. Y.D. Yennemadi a pleader in the District Kanara at Karwar).

*****

Sir,

With reference to your letter No.1318, dated the 11th February 1954, on the above subject, I have the honour to state that sanction for defence of the above mentioned Reference is hereby accorded as requested by you.

Yours faithfully,

for Remembrancer of Legal Affairs.

MMS.20.2.54.

Submitted for signature
24/2
Sof (MA)

Issued
MA
23/2

File in Misc. Suits Kanara/53

24/2

S S (Kel) 24/2

Misc. Suits Kanar. /53

25/2/54

Misc Suits Kanara 1953
NO. 192

117 H3

Office of the
Government Pleader, High Court,
Bombay, 1st March 1954.

From

Shri H.M.Choksi,B.A.(Hons.)LL.B.,
Government Pleader, High Court.

To

The Remembrancer of Legal Affairs, Bombay.

L.D.
2 - MAR 1954

Subject:- Civil Reference No. 5 of 1954. (in the matter of the Conviction of Mr.Y.D.Yenne--madi a pleader in the District Kanara at Karwar.). ... ...

Sir,

With reference to Your letter No.5245/E dated 23rd February 1954, on the above subject, I have the honour to send herewith a copy of Paper book in the above reference with a request to send me your necessary instructions in the above reference at an early date.

Yours faithfully,

V. S Desai

For Government Pleader, High Court.

627
413/54

Submitted for perusal & the above mentioned Reference is already sanctioned.
for orders
5/3 Sol/H.M.

List of papers in Civil Reference No. 5 of 1954.

Exh. No.	Particulars.	Page No.
-----	Letter No. 4124 of 1953 dated 20th October 1953 from Sessions Judge, Kanara.	1.
----	Judgment of the Sessions Judge, Kanara in Criminal Appeal No. 43 of 1953 (with Criminal Revision 20 of 1953.)	2.

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121-

From,

Shri A.A.Shaikh, M.A.LL.B.,

Sessions Judge, Kanara, Karwar.

To

The Registrar, High Court,

Appellate Side, Bombay No. 1.

No. 4124 of 1953. Karwar, 20th October 1953.

Sir,

As required by para 3(b) of the Criminal Circular No. 103 at Page 57 of the High Court Criminal Manual, I have the honour to forward herewith a copy of the Judgment in Criminal Appeal No. 43 of 1953 of this Court against Shri V.D. Yennemadi, A Pleader of this place as the offence under section 85(1)(2) of the Bombay Prohibition Act for which he was tried and sentenced was a congnisable one regard being had to section 118 (1) of the said Act.

Yours faithfully,

Sd/- A.A.Shaikh,

Sessions Judge, Kanara.

In the Court of the Sessions Judge,

of Kanara, at Karwar.

Criminal Appeal No. 43 of 1953.

(With Criminal Revision No.20 of 1953.)

V.D.Yennemadi, Pleader, Karwar..... Appellant (orig. Accused.)

Versus

The State.

Pleader for the Appellant; in person.
Pleader for the State: the Public Prosecutor.

The appellant has been convicted on a trial held on the 31st of August 1953 by Shri P.A. Apte, Resident Magistrate, of the I Class, Karwar, in the District of Kanara, of Offence under section 85(1)(2) of the Bombay Prohibition Act and sentenced to undergo S.I. for two months and to pay a fine of Rs. 200/- or in default to suffer further R.I. for one month.

The Public Prosecutor has filed a revisional application to make a report to the Hon. High Court for enhancing the sentence imposed on the appellant.

2. This is an appeal by the original accused from the order of the Resident Magistrate, First Class, Karwar, convicting him under section 85(1)(2) of the Bombay Prohibition Act for having behaved in a disorderly manner under the influence of drink on 20-10-1952 and 12-12-1952 and sentencing him to suffer simple imprisonment for two months and to pay a fine of Rs. 200/- or in default to suffer further simple imprisonment for one month.

3. The prosecution case as can be gathered from the Judgment of the Learned Magistrate, it being the only record available under section 264(2) of the Criminal Procedure Code for the decision of the appeal, is as under - On 20/10/1952 at about 4 P.M. the appellant went and stood near the D.S.P.'s Office room at Karwar and began to abuse the D.S.P. and the Collector. The D.S.P. (Mr:Laher) on hearing the abusive language came out and found the appellant standing in front

of the door of the office room. The appellant was shouting and abusing, his gait was unsteady and he was not in his senses. According to the D.S.P. he had consumed liquor. The D.S.P. asked him not creat disturbances and on hearing this remark he got down from the verandah. As he was not in his senses the D.S.P. directed Home Inspector V.S.Rane to take necessary action against the appellant. The Home Inspector ordered Head.constable Hamid.to take the appellant to the Police Station and accordingly the appellant was taken to the Police Station. From the Police Station he was sent by P.S.I. Patil to the Civil Hospital where he was examined by Dr. Malurkar at 4-55 P.M. Dr. Malurkar found that the appellant was smelling of alcohol, that his pupils were slightly dilated, that he was ~~taking~~talking and shouting irrelevantly and that he was under influence of liquor. He, however, noticed his gait steady. He took the appellant's urine and boiled and sent the same to the Chemical Analyser who certified that the blood contained 101 Mg.% of ethyl alcohol. On these facts it was urged for the prosecution that the appellant behaved in a disorderly manner under the influence of drink on 20th October 1952 at 4 P.M. near the office of the D.S.P. at Karwar.

4. There is another episode of 12th December 1952. On that day the appellant went to the Court of the Resident Magistrate First Class, at Karwar, at 1 P.M. and began to shout, 'Free Bharat'. Mr. Habbu, who was then the Magistrate, was working in his office chamber and he asked the Court Peon Vithu Tamse to send away the man creating trouble. Vithu Tamse thereupon asked the appellant to go away and the appellant was next seen by Laxman Bhika in between the accounts office and the D.S.P.'s Office. He was swaying and abusing. Ladu Gopal found the appellant shouting in English near the well adjoining the office building of the D.S.P. Jamadar Bikaro Shamba was waiting in front of the Court of the Resident Magistrate, F.C. Karwar probably for Court work. He heard the appellant talking loudly and noticed that the appellant was under the influence of liquor. The appellant was swaying and abusing others and his speechwas affected. His

had becaome red and his mouth was smelling of liquor. The Jamadar took the appellant to the police station and lodged a complaint against him at-about at about 1-30 P.M.The appellant was taken to the Civil Hospital where the Civil Surgeon examined him at 2 P.M. and issued a certificate to the effect that the appellant was under the influence of liquor.

5. In support of the two incidents two sets of witnesses were examined by the prosecution. Mr. Laher (D.S.P.) Mr. Rane(Home Inspector), Head Constable Abdul Hamid, Balso Powar , Dr. Malurkar and P.S.I. Patil referred to the first incident of 20th October 1952 and deposed to facts which had taken in their presence and which were within their knowledge Withu Tamse, Laxman Bhika, Dr. Kazi (Civil Surgeon), Ladu Gopal and Bhikaro were witnesses for the second incident of 12th December 1952. One Francis Alen in whose presence a panchanama of the condition of the appellant was drawn in the Police station was examined to prove the said Panchanama.

6. The appellant, who is a pleader, pleaded not guilty and his defence was that since May 1952 he was taking Hemo Draksho Malt under the advice of his family Dr. Talvelkar and that on the two days in question he had consumed the same stuff and not liquor prohibited by Law. In support of his case, he called Dr. Talvalkar who pointed out that he had orally advised him to take twoce tonic wine for loss of appetite, nervousness and general debility and that he had accordingly informed him, that is, that he was Dr. Talvalkar/further taking Hemo Drakaho Malt. Dr. Talvalkar further stated that the doxe for an adult of Hemo Draksho Malt, beinz one or two tea spoonful would not be sufficient to bring the patient under the influence of liquor. The appellant examined one A.V. Basrur who deposed that after May 1952 he,that is, the appellant used topay cash and purchased Hemo Draksho Malt and other medicines.

7. The learned Magistrate relying on the prosecution evidence has found that the appellant had behaved in a disor derly manner under the influence of drink, that is liquor on both the occasions and that the appellant has not

shown that he had taken medicated alcohol. The appellant had 7 previous convictions for the offence under the very section viz. Section 85(1)(2) to his credit; but the learned Magistrate passed the light sentence on him because his married life has been most miserable and he had at times suffered from insanity.

8. The appellant has challenged the order of conviction and sentence and at the time of arguments he has urged that he had sufficiently discharged the burden of his having taken a medicated alcohol, and therefore he could not be convicted under section 85(1)(2) of the Bombay Prohibition Act.

9. The points for determination are :-

(1) Whether the prosecution has established that the appellant behaved in a diorderly manner under the influence of drink i.e. liquor on 20th October 1952 and 12th December 1952 as alleged ?

(2) What order ?

10. My findings are :-

(1) Yes. (2) As per order below.

Reasons.

10. The appellant himself has argued the appeal and he has taken me through several passages of the Judgment of the learned Magistrate with a view to showing that his plea that he had taken medicated alcohol has been borne out by the medical evidence adduced by the prosecution. It is in evidence that Hemo Draksho Malt which was alleged to have been taken by him on the two dates in question contained 9 to 10 per cent of alcohol. His own family Dr. Talvalkar has clearly pointed out that a doze of Hemo Draksho Malt for an adult being one or two tea spoonful would be suffieient to bring the patient under the influence of drink.In re-examination it was taken out by the defence from the mouth of Dr. Talvalkar that in case a person consumed half a bottle of Hemo Draksho Malt he would get signs of drunkenness and also toxic signs as result of iron contained in that medicine. It was not however

#ST 131

the appellant's case that on the two dates in question he had taken half a bottle of Hemo Draksho Malt. Dr. Malurkar and Dr. Kazi who examined him on 20-10-1952 and 12-12-1952 respectively howhere stated that he was exhibiting toxic signs. In fact both of them are definite in their opinion that he was under the influence of liquor. Reliance is sought to be placed on the following statement of Dr. Malurkar by the appellant.

> "Symptons which I observed in the case of the accused can be caused by medical alcohol and that there are some medicines which contain alcohol upto 30 per cent.".

The Medicated alcohol, that is, Hemo Draksho Malt which the appellant alleges to have taken contain 9 or 10 per cent of alcohol and his family doctor is definite that a normal doze of the medicine taken by an adult would not cause drunkenness or bring him under the influence of drink. Dr. Kazi has expressed a view similar to that of Dr. Malurkar and the medical evidence led by the prosecution would not in any was help the defence. It is significant to note that Dr. Malurkar or Dr. Kazi was not asked any question in cross-examination as regards the effect produced by Hemo Draksho Malt, if taken in small or large dozes and to me, it appears that the plea advanced by the defence at the close of the prosecution evidence is an afterthought.

11. Besides the medical evidence adduced by the prosecution, several witnesses have been examined to prove that the appellant was behaving in a disorderly manner under the influence of liquor on both the dates. Mr. Laher(D.S,P.) who was required to come out of his office room on hearing the abuses to himself and the Collector on 20-10-1952 found that appellant shouting and abusing. He has stated that the appellant's gait was not steady and that he was not in his senses and that he had taken liquor. Mr. Laher has no reason to give false evidence against the appellant. Home Inspector Rane was asked by the District Superintendent of Police on the very day to take necessary action against the appellant. He has a similar story to repeat. Head Constable Abdul Hamid found him swaying and under the influence of liquor. Balso Powar who is

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AF

20-10-1952 at 4 P.M. he had seen the appellant going with unsteady gait towards the office room of the District Superintendent of Police and loudly abusing the District Superintendent and the District Magistrate. The appellant was found behaving in a similar manner on 12-12-1952 first in the Court- having of the Resident Magistrate and taken outside within the compound of the same building by Vithu Tamse, Ladu Gopal Laxman Bhikha and Jamadar Bhikaro Shamba. According to the evidence of these witnesses the appellant, who was under the influence of liquor, was talking loudly and abusing others and his mounth was smelling of liquor.

12. All this evidence together with the medical evidence proves beyond any shadow of doubt that the appellant was behaving in a disorderly manner under the influence of liquor on both the dates. The appellant has not shown any reason as to why the prosecution witnesses should think it necessary to state falsely he had consumed Hemo Draksho Malt has been torpedoed by his own family doctor. For the second occurrence which has taken place on 12-12-1952, in view of the amendment of section 85 made by Bombay No. 26 of 1952, it will have to be presumed until the contrary is established that the appellant had drunk liquor for the purposes of intoxication and not for his medical purpose and evidently the appellant has failed to discharge the burden of proving that he had taken medicated alcohol for medical purposes. The conclusions of the learned Magistrate that the appellant is proved guilty of the offence under section 35(1)(2) are quite proper and they are based on proper appreciation of the entire evidence led in the case. The appeal will, therefore, be dismissed.

12. Before I part with the case I will have to refere to criminal revision application No. 20 of 1953 made for the State against the appellant by the learned Public Prosecutor of this district because both the matters have been heard together. It has been pressed for the State that

that the sentence of two months together with a fine of Rs.200/- passed on the Appellant is quite inadequate in view of the facts that he had seven previous convictions to his credit and that the case may be referred to the Honourable High Court with a recommendation that he should be awarded the minimum of sentence of six months and a fine of rupees five hundred. Reasons have been given by the Learned Magistrate for passing a lighter sentence on the appellant and I agree with him that in the circumstances of the case as explained, the sentence is quite reasonable. The appellant is a pleader and a son of a retired District Judge. As observed by the Magistrate he has a miserable married life, his wife leaving him soon after the marriage. Thereafter he became desperate and in order to drawn all his worries and miseries he probably took to drinking. When the appellant argued the Appellant and addressed the Court, I could feel that he was an intelligent man and there was touch of despondency and disappointment in his look. He is a physical wreck and he was unable to walk properly in the Court. Though the present is his 8th conviction , the sentence of two months' simple imprison ment appears to be quite adequate and proper. I, therefore, do not think it necessary to refer the matter to the Honourable High Court as urged by the learned Public Prosecutor and the revision application made by the learned public Prosecutor will be dismissed.

O R D E R

The Order of conviction and sentence passed against the appellant is confirmed and the appeal is dismissed, The appellant should surrender to his bail.

15th October 1953. Sd/- A.A.Shaikh,
Sessions Judge, Kanara.

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Solr.(M.)

Civil Reference No.5/1954 in the
High Court.

Shri V.D. Yennemadi, Pleader practising at Karwar was convicted by the Resident Magistrate First Class for an offence under section 85(1)(ii) of the Bombay Prohibition Act and was sentenced to undergo simple imprisonment for two months and to pay a fine of Rs.200/-. He was found drunk and disorderly on two occasions. The Appeal filed by Shri Yennemadi against his conviction and sentence was dismissed by the Sessions Judge of Kanara. It appears that this was his 8th conviction for a similar offence. The Public Prosecutor, Karwar therefore applied to the Sessions Judge for a Reference to the High Court for enhancement of the sentence. The learned Sessions Judge, however, did not accept the Reference. He pointed out that the appellant was a pleader and the son of a retired District Judge. His whole life was miserable and he was involved in the habit of taking liquor by way of relief. The learned Sessions Judge took the view that the sentence of two months ~~of~~ simple imprisonment with a fine of Rs.200/- was quite sufficient.

However the Sessions Judge made a Reference to the High Court for disciplinary action against Shri Yennemadi. This Reference is numbered in the High Court as Civil Reference No.5 of 1954. The Govt. Pleader, High Court wants instructions as to the attitude to be taken up on behalf of the Government in this matter.

Shri Yennemadi had 7 convictions for the same offence before he was convicted recently by the Resident Magistrate, First Class, Karwar.

Shri....

Shri Yennemadi is a practising pleader. He is continually breaking the law, and therefore he does not seem to be fit any more to hold the office of pleader who is supposed to be a guardian of law. The Govt. Pleader, High Court may be, therefore, instructed to urge that proper disciplinary action should be taken against Shri Yennemadi by way of suspension of his Sanad for a specific period of time.

6/3

Spl. D. Officer

7/3

IMMEDIATE.

No. 6580/9
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 10th March 1954.

B4-B9

To

The Government Pleader,
High Court,
Bombay.

Subject:- Civil Reference No. 5 of 1954.
(In the matter of the Conviction of Mr. Y.D.Yennemadi a pleader in the District Kanara at Karwar ..)

Sir,

With reference to your letter No. 1927 dated the 1st March 1954 on the above subject, I am directed to state that Govt may urge that proper disciplinary action should be taken against Shri Yennemadi by way of suspension of his Sanad for a specific period of time.

Yours faithfully,

for Remembrancer of Legal Affairs.

Submitted for approval
VK
10/3

Issued
10/3

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File in Misc. Suits Kanara/53

11/3

17/3

Misc. Suits Kanara/53

13/8/54

No. 2159

Office of the
Government Pleader, High Court,
Bombay, 9th March 1954.

From
Shri H.M.Choksi, B.A.(Hons.)LL.B.,
Government Pleader, High Court.

To
The Collector of Kanara,
At : K A R W A R.

L.D.
11 MAR 1954

Subject:- Supreme Court Civil Application No.4 of 1954 in Civil Reference No.10 of 1953. Subraya Venkatraman Naik -VS- The State of Bombay & Anr.

Sir,

With reference to the subject noted above, I have the honour to forward herewith a copy of Memo. of the above application alongwith a notice with a request to send me your necessary instructions in reply to the application at an early date.

This should please be treated as very urgent as the above application will come up for final hearing on or after 15-3-1954.

Yours faithfully,

V.J Desai

for Government Pleader, High Court.

No. 2190

Bombay, 9th March 1954.

Copy with a copy of Memo. of S.C.C.A.No.4/54 alongwith a copy of notice forwarded with compliments to the Remembrancer of Legal Affairs Bombay with a request to accord formal sanction for the defence of the above application and send me your necessary instructions.

LEGAL

File No. 7115/11/3154

4)

Submitted

Sanction is
Not offence of
C.A.T. may be
recorded.

It is for orders
whether any instructions
are to be given.

11/3

Sol (Mil).

Resubmitted.
Sub G.
1573 Sol (Mil)

Nec CD obs ex ch
J. P. Hz

My view remains
that before the applicant
for leave to file
the R. Application could
no. Official records
seem to be necessary

150

143

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

S.C.C.A. NO. 4 OF 1954.

(CIVIL REFERENCE NO. 10 OF 1953

IN SMALL CAUSE SUIT NO. 46 OF 1953.)

District- NORTH KANARA

Subrava Venkatraman Naik,
45 Rayat, resident of Kodkani
in Kumta Taluka..... ..... Petitioner
Original
Plaintiff.

V/S

Narayan Masti Patgar,
59 Rayat, resident of Hegde in Kumta Taluka.... Opponent
(Orig. Defendant)

Claim Rs. 32-10-0

To

The Hon'ble the Chief Justice
and other Judges of this Hon'ble Court.

The humble petition of the
Petitioner abovenamed.

MOST RESPECTFULLY SHEWETH :-

1. The Petitioner filed a Small Cause Suit being small Cause Suit No. 46 of 1953 in the Court of the Civil Judge, J.D. at Kumta for the balance of rent due to him from defendant - who is a tenant of the suit land belonging to the Plaintiff.

2. On 7th April 1953, defendant paid Rs. 39-4-0 as rent for the year 1952-53. The Plaintiff was entitled to Rs. 71-14-0 calculated on the basis of 1/3rd of the Crop-Share on the basis of the notification of the Mamlatdar declaring the average yield. The Petitioner plaintiff filed a suit for the balance of rent which was Rs. 32-10-0.

.....2

3- The Petitioner-plaintiff's contention was that - the Notification No. 3490/49-IV-(C) dated 8th December, 1952 issued by the Government of Bombay fixing the lower rate of the maximum rent payable by a tenant to the landlord at one sixth of the crop of such land whether the land was irrigated or not was ultra vires and bad in law on the ground that Section 6(2) of the Bombay Tenancy and Agricultural Lands Act 1948 under which it was issued was ultra vires the Pro-vincial Legislature since the same constituted delegated legislation and also on the ground that the impugned notifica-tion was beyond the scope of the Sub-Section under which it was issued.

4. By his judgment dated 16th June 1953, the learned - Civil Judge of Kumta took the view that Section 6(2) of the Bombay Tenancy and Agricultural Lands Act is ultra vires the Provincial Legislature and made a reference to the High Court of Judicature at Bombay as required by Section 113 of the Code of Civil Procedure. The said reference was numbered as Civil Reference No. 10 of 1953.

5. The said reference was heard by the Hon'ble Mr. Justice M. C. Chagla, The Chief Justice and the Hon'ble Mr. Justice Dixit along with Special Civil Application No. 1008 of 1953 and Special Civil Application No. 1480 of 1953 and delivered a common judgment on 30th September 1953. Their Lordships have held that Section 6(2) of the Bombay Tenancy and Agricultural Lands Act is valid and that the impugned notification is within the scope of th said Sub-Section.

6 . That Your Lordships' Petitioner feeling himself - aggrieved by the said judgment is desirous of appealing to the Supreme Court from th same on the following grounds:-

(I) That it should have been held that Section

6(2) of the Bombay Tenancy ad Agricultural Lands Act, 1948 was ultra vires of the Bombay State (Proginoial) Legislature.

II. That having observed that the most important relation that had to be regulated was the payment of rent by th tenant and acceptance of rent by the landlord the Hon'ble High Court should have held that the Legislature had completely effected itself on the question of lowering the maximum rent and that there is a total absence of the legislative will on the point.

III. That it should have been noted ~~xxxxxx~~ that the legislative policy has not been enunciated with sufficient clearness and it should have further been noted that sub-Section 2 of Section 6 does not lay down any standard - whatsoever in respect of the reduction of rent. It should have been noted that Section 6(2)arms the Executive with the power to abrogate Section 6(1).

(IV) That it should have been held that Section 6(2) constitutes a fraud on Section 299 of the Government of India Act, 1935. It should have been held that the said Sub Section was not within the legislative competency fixed by the instrument creating the Legislature.

(V) That it should have been held tht the limita-tions imposed on the powers of the Legislature by the Gourmment of India Act, 1935 were of paramount importance and that it was not com-petent for the State Legislature to provide

for expropriation of property by an indirect method.

(VI) That it should have been held that the notification being legislation subsequent to the Constitution (First Amendment) Act is not protected by Article 31 B of the Constitution of India even assuming that the said article needs to be considered in the context of this case.

(VII) That the said sub-Section ought also to have been held as bad as constituting delegated legislation.

(VIII) That the view of this Hon'ble High Court of Bombay as to changes that the doctrine of delegation is alleged to have undergone "due inevitably to the complexity of modern life etc." is not correct.

(IX) That significance of distinction between dele--gated legislation and conditional legislation or subordinate or ancillary legislation, has wrongly been underrated.

(X) That it is not correct to say that once the policy is laid down and is made clear in the Act itself, it would not be for the Court to consider the extent and the nature of the dele--gation and that that must be left to the discre--tion of the Legislature.

(XI) That the doctrine of delegated legislation ~~kx~~ has not been considered on correct principles and the whole case has been approached from a wrong point of view.

(XII) The dicta laid down by the Supreme Court in this connection, especially in (1952) 3 S.C. R. 889 (Maharajadhiraj Sir Kameshwar Singh's Case) and in 53 Bombay Law Reporter 402 (S.C.) (The State of Bombay V/S Narothamdas) have not been correctly appreciated and applied to the circumstances of the present case.

(XIII) That it should have been held that it was the duty of the Legislature to provide for "a rational minimum". It was an error to import the concept of "a natural minimum".

(XIV) That having observed that the landlords have a right to know what their future is and what they should expect from moneys that they have invested in the lands the Hon'ble High Court should have held that it was incumbent on the State Legislature to state specifically the limit upto which the proprietory rights of the landlords would be curtailed for improving the social and economic conditions of peasants.

(XV) That it ought to have been held that in the present case the Legislature has not made its policy clear in the enactment itself, if not the Legislature has failed to lay down any policy at all, at least so far as Section 6 of the Act is concerned.

(XVI) That in fact the Legislature has abdicated its legislative function and effaced itself.

(XVII) That the Hon'ble High Court has not properly appreciated the Legislative history.

(XVIII) That it should have been held that the .....

impugned notifications were bad, not only on the ground that the Sub-Section 2 of Section 6 under which they were purported to be issued was bad but also because they went beyond the scope of the said Sub-Section and on other grounds.

(XIX) That the notifications in question also violate rights to property guaranteed by the Constitution of India. It should have been noted that the Constitution (First Amendment) Act of 1951 was of a temporary character and that it ceased to be valid after the first meeting of the Parliament which was duly con-stituted after the general election. Art 31 B has ceased to have any force or effect and Section 6(2) of the Bombay Tenancy and Agricul-tural Lands Act can now be challenged on the ground that it violates fundamental rights.

(XX) That it should have been held that the power of the State Government to issue notifications was exhausted and that the Government had no power to issue notifications from time to time.

(XXI) It should have been held that having regard to the scheme of the Bombay Tenancy and Agricultural Lands Act, 1948, Section 14 of the Bombay General Clauses Act 1904 has no application to Section 6 of the Act.

(XXII) That it should have been noted that the object of giving relief to the tenant is achieved by various other sections of the Act and these Sections make it clear that when the Government has issued one single notification in respect of

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particular areas no occasion will arise for the Government to issue a series of notifica-tions.

(XXIII) That even assuming that Section 14 of the General Clauses Act 1904 does apply it should have been held that "occasion" is an objective term and that it was obligatory on the State Government to disclose the reasons for lower-ing the maximum rent, to the satisfaction of the Court and that such reasons are justiceable.

(XXIV) That it should have been noted that the Bombay Tenancy and Agricultural Lands Act 1948 does draw a line of distinction between "particular area" and "specified area" and that Section 8 of the Act makes this clear. It should have been noted that a lower rate of the maximum rent can be fixed in a particular area only. It should have been noted that the power of fixing a lower rate of the maximum rent is very much restricted in its scope and is not capable of being exercised generally through-out the whole State.

(XXV) That it was an error to hold that the word "rate" in Section 6(2) has no significance whatsoever.

(XXVI) That the order as to costs is erroneous.

7. That the judgment from which an appeal is sought involves a substantial question of law with respect to the interpretation of the Constitution of India as also other substantial questions of law and is a fit one for preferring

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167

preferring an appeal to Supreme Court of India.

8. That Your Lordships' Petitioner is ready and willing to comply with the rules and orders as to giving security for costs and otherwise, regulating appeals to the Supreme Court

The Humble Prayer of your Lordships' Petitioner therefore is that Your Lordships will be pleased -

(A) to grant him a certificate that the judgment from which an appeal is sought involves substan--tial questions of law with respect to the inter pretation of the Constitution of India and that it is otherwise fit for Preferring an appeal to Supreme Court.

(B) To admit his petition and to transmit to the Supreme Court, under the seal of this Hon'ble Court, a correct copy of the record so far as is material to the question in dispute herein.

The Petitioner further prays that Your Lordships be pleased to direct that this appeal be consolidated with S. C . C.A.No. - of 1953 from the order in Special Civil Application No. 1008 of 1953 as both involve the same questions and have been disposed of by a common judgment.

BOMBAY dated 14th
December 1953.

Sd/ V.M.Limaye.
Advocate for the Petitioner.

In the High Court of Judicature at Bombay, Bombay. 1954

Civil Application No. 4 of 1954 for leave to appeal to Supreme Court.

Civil Reference No. 10 of 1953.

Small Cause Suit No. 46 of 1953 of the Court of C.J.(J.D.)Kumtha

Subraya Venkatraman Naik.
(Original Plaintiff.) ... Petitioner.

Versus.

The State of Bombay and another. ... Opponents.

Claim Rs.32-10-0.

No. 719 of 1954.

Date 1-3-1954.

From
The Dy. Registrar,
High Court, Appellate Side,
Bombay.

To
The Secretary,**
Legal Department, State of Bombay,
Secretariat. Bombay.

To be served on the Govt. Pleader.

Sir,

The petitioner abovenamed having presented a petition to this Honourable Court for leave to appeal to the Supreme Cour from the decision dated 30th September 1953 of this Court, and this Court having on 2nd February 1954 ordered rule to issue to show cause (if any you have but not otherwise) why a certificate should not be granted to the following effect Viz., that the appeal involves important substantial question of law, and that the appeal is also otherwise a fit one for being preferred to the Supreme Court, and to admit this petition and to trans-mit to the Supreme Court a Correct copy of the record so far as it is material to questions in dispute herein, I have the honour to inform you that the hearing of the petiton will take place on the 15th day of March 1954 or any subsequent day which to this Court may seem convenient and if no appearance is made on your behalf either by an Advocate of this Court or agent duly authorised and instructed, it will be heard and determined in your absence.

Yours faithfully,

Sd/-

For Dy. Registrar.

Notice recvd. on 4. -3-1954.

V. J Desai

For G-ovt.Pleader, High Court.

No. 7248/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No. 1), 18th March 1954

To

Government Pleader,
High Court, Bombay.

Subject:- Supreme Court Civil Application No. 4 of 1954 in Civil Reference No.10 of 1953. Subraya Venkatraman Naik Vs. The State of Bombay & Anr.

Sir,

With reference to your endorsement No. 2190, dated the 9th March 1954, on the above subject, I have the honour to state that the defence of the above mentioned Application is hereby sanctioned. You are requested to oppose the Application for leave to appeal to the Supreme Court.

Yours faithfully,

for Remembrancer of Legal Affairs.

IL.
17.3.

Copy forwarded with compliments to the Collector of Karwar.

Filo u Mrsc. Sveti Kuzam '53

19/3

S.S 19/3

16576S

CORRESPONDANCE.

DOCKET SHEET.

FILE No 11575

SUBJECT:- D.D., enforcement of ~~North~~ Kanara Distt. Industrial Co-op. Association Ltd., Honavar — attachment of current account of

Legal Deptt

E BRANCH.

REFERENCES

Date.	To whom sent.	Notes and instructions.
21/4/58	Shri Parwani	Submitted for orders Pl see DD's note Ors Pl I auth. Pl also see letter office telegram at Sl# A 1/5 Sol(Hil) The Dept may be informed that a disp- osition for which was examined taking in the Dept of A. D.S.A was informed accordingly as all issues by telegram. 1-5-58

163 163

Letter

To

The Government Pleader,
High Court, Bombay.

No.8583 Karwar, 18-3-1954.

Subject: Supreme Court Civil Application No.4 of 1954 in Civil Reference No.10 of 1953.. Subraya Venkatramm Naik Vs. The State of Bombay.

Reference: Your No.2189 dated 9-3-1954.

L.D.
22 MAR 1954

The applicant had filed a Civil Suit in the Court of the Civil Judge, Kumta who had made a reference to the High Court. The High Court has already disposed of the reference holding that Section 6(2) of the Bombay Tenancy and Agricultural Lands Act 1948 is intra-vires and that the State Government has powers to issue notifications under that section. There are no papers bearing on the subject in this office. The papers underlying the defence in the High Court are probably in the Secretariat, Revenue Department, which has issued the notification now challanged by the applicant or with the Legal Department. Those departments may, therefore, please be addressed in the matter.

THE SECRETARY ...
LEGAL DEPARTMENT
File No. 8153
Dup No. 22/3/54 E
Branch

Asstosh P.A.
Collector of Kanara.

Copy submitted to Government in 1) Revenue Department
11) Legal Department. ✓

Submitted
These are no p/bs. in Revs. Dept
File w' Misc. Suits Kanara
Vk
24/3
Sol(M.L) 24/3

167 167

Office of the R.L.A.

The Development Department is informed that the draft application sent by the Sub-Government Pleader, Honavar was examined and approved by this Office and the Sub-Government Pleader was informed accordingly on 5th November 1953 by a telegram.

for Remembrancer of Legal Affairs.

U.R. to D.D. No. 11261/2 dated the 3rd May 1954

BM.
1.5.

Submitted for approval
1/5

Sol (Nil)

Financial note
3/5

File in Misc. Smith Kanara/53

VL

4/5.

S.S.

Misc. Smith, Kanara | 53

6/5/54

53

169/169

No. 3230
Office of the
Government Pleader, High Court.
BOMBAY: D/- 8.4.1954.

From: Shri H. M. Choksi, B.A.(Hons).LL.B.,
GOVERNMENT PLEADER, HIGH COURT.,

To

The Secy. to Government
Legal Department
BOMBAY.

Sub: Supreme Court Civil Application No. (in Civil Ref. 10/53); 132/54 (in Spl. C.A. 1611/53) and 131/54(in Spel. Civil Application No. 1008/53).
===

10463
E
10/4/54

Sir,

With reference to your letter No. 7248/E dated 18th March 1954 on the above subject I have the honour to inform you that the cases noted above were heard by the High Court on 30.3.1954 when the following order was passed :-

" Rule discharged with costs.

Direction to the Civil Judge, Junior Division Kumta, not to proceed with the suit till the disposal of the Supreme Court Appeal(preferred against the decision of in Spl . C.A.Nos.1008 and 1611 of 1953 decided on 30.9.53 and 19.10.53 respectively)

The Court dismisses this petition not on merits but on the ground that there is no final order, decree or judgment which would be appealable to the Supreme Court under the Constitution."

L D.
- 9 APR 1954

Yours faithfully,

V. J. Desai

For Government Pleader,High Court.

P.T.O.

No. 3231

(1) Copy forwarded with compliments to the Collector of Kanara at Karwar for information with ref. to his No.8583 dated 18.3.54.

No 3232

(2) Copy forwarded with compliments to the Collector of East Khandesh at Jalgaon for information with ref. to his No. TNC/539 dated 12th March 1954.

No. 3233

(3) Copy forwarded with compliments to the Collector of Thana for information with ref. to his No. TNC 1 dated 23rd March 1954

Secretariat for information
file in these suits Kanara/53

V.K.
28/4

Sol(M.L. 1847

Misc Suits Kanara/53
4/3754

G.O.P.—(J) J 157—12,000—9-52
G.O, L.D, No. 2193 dated 7-12-45

153

[Govt. PI. H.C. Bom.—Spl. Form No. 2

L.D.
22 APR 1954

No. 3639

171 - 57

From

THE GOVERNMENT PLEADER, HIGH COURT, BOMBAY;

THE SECRETARY TO GOVERNMENT, LEGAL DEPARTMENT, BOMBAY;

[redacted]

To

[redacted]

Bombay... 20th April 1954 *.....195*

SIR

Referring to....your letter.....No....5245/E.....

dated..23rd February 1954....195 ; I have the honour to inform you that the Case noted in the margin was heard by the High Court on

Civil Reference No. 5 of 1954.
In the matter of the conviction of Mr. Y. D. Yennemadi a pleader in Dist- of Kanara at Karwar.
V/S
The Government Pleader, High Court.

6.4.54. when the following Order was passed:—

" For the reasons stated in the accompanying judgment the Court passes no order on the reference."

Yours faithfully,

11713
23/4/54

V. S Desai

For Government Pleader, High Court.

The Government Pleader, High Court.

V/S

[illegible] at Kalwar.

In the matter of the revision of Mr.

Reference No. 5 of 1954.

30/4

6.4.54.

" For the reasons stated in the accompanying judgment
the Court passes no order on the reference."

30/4

For

JUDGMENT RECORDED BY THE HIGH COURT IN CIVIL REFERENCE NO. 5 OF 1954 in the case of The Sessions Judge, Kanara, Karwar V/S Mr.V.D.Yennemadi, Pleader, Karwar.

--

The Government Pleader for the Referor.
Mr. D.V.Patel for the Opponent.

Coram:- Chagla C. J.& Dixit J.
Tuesday, 6th April 1954.

ORAL JUDGMENT :(Per Chagla C. J.) -

Mr. V.D.Yennemadi, who is a pleader practising in the District Court at Karwar, was convicted of an offence under Sec. 85(1)(2) of the bombay Prohibition Act and he was sentenced to two monhs' simple imprisonment and to pay a fine of Rs. 200/-. The charge against Mr. Yennemadi was that on two occasions, on the 20th October 1952 and on the 12th December 1952, he had taken alcohol and was guilty of rowdy conduct and disorderly behaviour. Against his conviction Mr. Yennemadi appealed to the Sessions Judge, Kanara and the Sessions Judge confirmed the conviction and the order of sentence. He refused to enhance the sentence although an application to that effect was made by the Public Prosecutor. After the learned Sessions Judge dismissed the appeal he forwarded the papers to us by reason of Criminal Circular No. 103(3), and the reason for submitting the papers to us is to enable us to consider whether under Sec. 24 of the Pleaders Act we should take any action against the pleader. Sec. 24 provides:-

> "The High Court may suspend or remove from practice
> pleader who has been convicted by any criminal Court in India of a criminal offence implying a defect in his character which in the opinion of the High Court renders him unfit to be a pleader."

Now, the section makes it clear that it is not merely

a conviction which will give jurisdiction to the High Court to take action under this section. What is necessary is not only a conviction, but it must be a conviction with regard to an offence which implies a defect in the character of the pleader, and the defect in the character must be such as to render him unfit to be a pleader.

Now, the question we have to consider is that if a pleader takes alcohol against the law, becomes rowdy and acts in a disorderly manner, is that conduct such as to display or reveal a defect in his character which would render him unfit to be a pleader? The learned Sessions Judge has pointed out that the pleader comes from a very good family and that he is a son of a retired District Magistrate, but unfortunately the fmx fates have not treated him too well He had a miserable married life, his wife having left him soon after marriage. After that he became desperate and in order to drown his worries and miseries he took to drink. Far from his conduct calling for a censure on our part which would take the shape of his being suspended or removed from practice, we feel that this is a case where some sympathy should be shown to the pleader concerned. It is the duty of every citizen and no less of that of a pleader to obey the law, and if the law of the land says that "you will not drink except under conditions and circumstances laid down in the Prohibition Act, then the duty of every citizen is to obey that law. But for disobeying the law and committing a breach of the law, Mr.Yennemadi has been sentenced to a fairly severe sentence, viz. two months' simple imprisonment. To a man in his position the sentence of two months' simple imprisonment is a very severe sentence. Therefore the majesty of the law has been vindicated and Mr.Yennemade has paid the penalty for breaking the law. But we do not understand why, although the Government pleader has pressed for it, we should proceed further under Sec. 24 of the District Pleaders Act and

and should either suspend him or remove him from practice. What he has done has nothing whatever to do with his practice. Even a pleader is entitled to have a private life and what he does in his private life is the sole concern of the pleader himself. If in his private life he breaks the law, he must pay the penalty as we already said. But unless his private life impinges upon his life as a pleader and affects his practice or his duty to the Court or to his clients, there is no reason why we should invoke our jurisdiction under Sec. 24 and proceed against him. There is no suggestion that Mr. Yennemadi while he was drunk was discourteous to the Court or failed to discharge his duty towards his client. Under the circumstances we think no action is called for at our hands.

No order on the reference.

Misc Suits Kamara/53

G.C.P.—(J) J 160—80000—10.52
G.O., L.D., No. 1193 dated 7-12-15

179 [Spl.—Govt. Pl. H. C. Bom. 8 e

No. 3932

From

THE GOVERNMENT PLEADER, HIGH COURT,
BOMBAY;

To

The Secretary to Government, Legal Department, Bombay
~~The Collector~~ of
~~The District Magistrate~~ of

L. D.
- 4 MAY 1954

Bombay 3-5- 1954.

Sir

With reference to this office letter No. 3230 X, dated 8-4- 1954

Supreme Court Civil Appln No 4/54
in
Civil Ref. ~~Appeal~~ / Application No. 10 of 1953

Certified copies of High Court ~~Judgment~~ order and Decree.

I have the honour to ~~return~~ forward herewith papers in the case as noted in the margin, and to request the favour of your acknowledging the receipt thereof.

Yours faithfully,

for V. Hambhir
Government Pleader, High Court.

Deft A

1305-5
7/5754 E

Submitted for information
Folder in Misc. Subj - Kanara/53

Sol (M.L) 9.3

Rs.as.ps.

No.1006
Copying and comparing charges.. 0-12-0(Fs.2) Typed by Mr.D.T.Patwardhan.
Paper charges. 0--0-3 Examined by Mr. G.S.Desai
Read by Mr. P.S.Vyas
Total Rs. 0-12-3.

Annas twelve and pies three only.

Superintendent, Decree Department.
21-4-1954.

Copy applied for on 2-4-54
Copy ready on 21-4-54.
Copy delivered on 24-4-54
Sent by V.P.P. Regd. Post on
Assistant Superintendent.

In the High Court of Judicature at Bombay.

Order passed by the High Court in the case of

Subraya Venkatraman Naik. (Original Plaintiff).. Applicant.
Versus
1 The State of Bombay. 2 Narayan Masti Patgar.
(Original Defendant).. ..Opponents

Being S.C.C.Application No.4 of 1954 in Civil Reference No.10 of 1953 in Small Cause Suit No.46 of 1953 (of the Civil Judge J.D. at Kumtha, for leave to appeal to Supreme Court.

Mr.V.M.Limaye, Advocate for the Applicant.
The Government Pleader (Mr.H.M.Choksi), for the Opponent No.1.
Mr. G.N.Vaidya, Advocate for Opponent No.2.

Coram:- Chagla C.J.and Dixit J.

Rule discharged with costs. Direction to the Civil Judge, Junior Division Kumta, not to proceed with the suit till the disposal of the Supreme Court Appeal (preferred against the decision in Special Civil Application Nos.1008 and 1611 of 1953 ~~dated~~ d/- 30-9-1953 and 19-10-1953 respectively).

The Court dismisses this application not on merits but on the ground that there is no final order, decree or judgment which would be appealable to the Supreme Court under the Constitution.

Sd/- V.R.Gadkari..

Deputy Registrar.

The 30th day of March 1954.

True Copy

For Deputy Registrar,

The 21st day of April 1954.

Rs.as.ps.

No.1006.

Copying and comparing charges. 1--8-0(Fs.4) Typed by Mr. D.T.Patwardhan.
Paper charges. 0--0-3 Examined by Mr. G.S.Desai
Read by Mr. D.J.Vyas
Total Rs....1--8-3

Re.one annas eight and pies three only.

Superintendent, Decree Department.
21-4-1954.

Copy applied for on 2-4-54
Copy ready on 21-4-54
Copy delivered on 29-4-54
Sd. b P.P. on
Asstt. Superintendent.

In the High Court of Judicature at Bombay.

Order passed by the High Court in the case of

~~The State of Bombay~~ Subraya Venkatraman Naik.
(Original Plaintiff).. .. .. Applicant.

Versus

1 The State of Bombay; 2 Narayan Masti Patgar,
(Ori.Defendant). .....Opponents.

Being S.C.C.Application No.4 of 1954 in Civil Reference No. 10 of 1953 in Small Cause Suit No.46 of 1953.(of the Civil Judge J.D.at Kumta). for leave to appeal to the Supreme Court.

Mr.V.M.Limaye Advocate for the Petitioner.

The Government Pleader (Mr.H.M.Choksi)for Opponent No.1.
Mr.G.N.Vaidya Advocate for Opponent No.2.

Coram:- Chagla C.J.and Dixit J.

Rule discharged with costs.

Direction to the Civil Judge, Junior Division Kumta, not to proceed with the suit till the disposal of the Supreme Court appeal.(preferred against the decision in Spl.Civil Application Nos.1008 and 1611 of 1953 dated 30-9-1953 and 19-10-1953 respectively).

The Court dismisses this petition not on merits but on the ground that there is no final order, decree or judgment which would be appealable to the Supreme Court under the Constitution.

30-3-1954. Sd/- V.R.Gadkari.
Deputy Registrar.

--

189

Bill of costs in the High Court, . . .

By the Applicant:--	Rs.as.ps.
Stamps for application.	5--0-0.
Stamps for vakalatnama (in Civil ~~Appln.~~ Ref)	0--0-0.
Bhatta for process.	1--4-0.
Advocate's Fee.	45--0-0.
Surcharge.	11--4-0.
Stamp for affidavit.	1--0-0.
Total Rs.	63--8-0.

By Opponent No.1:--	Rs.as.ps.
Stamps for vakalatnama (~~In Civil Application~~ G.P.Appears).	0--0-0.
Advocate's Fee.	45--0-0.
Surcharge.	11--4-0.
Total Rs.	56--4-0.

By Opponent No.2:-	Rs.as.ps.
Stamps for vakalatnama (in Civil Application).	0--0-0.
Advocate's fee	45--0-0.
Surcharge.	11--4-0.
Total Rs.	56--4-0.

14-7-54

Sd/- V.R.Gadkari.

(SEAL) Deputy Registrar.

The 30th day of March 1954.

True Copy.

For Depty Registrar,

The 21st day of April 1954.

Misc. Suits 1/Sangra/53

12/5/54

G.C.P.—(J) J 160—80000—10.52
G.O., L.D., No. 1193 dated 7-12-15

[Spl.—Govt. Pl. H. C. Bom. 8 e

No. 4605

From

THE GOVERNMENT PLEADER, HIGH COURT,
BOMBAY;

To

The Secretary to Government, Legal Department, BOMBAY.
~~The Collector of~~
~~The District Magistrate of~~

Bombay..27.5.1954.....195

Sir

With reference to this office letter No. 1318, dated 11-2-1954 & your No.5245/E dt. 23rd Feb 54

CIVIL REFERENCE

~~XXXXXX~~ No. 5 of 1954

Certified copies of High Court Judgment and Decree.

I have the honour to forward herewith papers in the case as noted in the margin, and to request the favour of your acknowledging the receipt thereof.

Yours faithfully,

For Government Pleader, High Court.

L. D.
28 MAY 1954

LEGAL DEPARTMENT
File no. 15076
Case No. 316-54 E
Previous

Submitted for information
(M. see E. 11/11/21 >
letter and office note
at sub Q)

Further Misc. Suits Kanara/53

31/5

Sob (Mis) S.S
31/5

1056.

Typed by Mr.S.D.Paradkar.

Examined by Mr

Read by Mr.

187

Rs.As.Ps.Fls.2.

Copying and comparing charges: 0-12- 0

Paper charges: 0- 0- 3

Total Rs: 0-12- 3

Annas twelve and pies three only.

Superintendent,Decree Department.

7-5-1954.

Copy applied for on 9-4-54

Copy ready on 7-5-54

Copy delivered on 26-5-54

Sent by V.P.P. Regd. Post on

Assistant Superintendent.

HIGH COURT APPELLATE SIDE. CERTIFIED COPY BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Order passed by the High Court in the case of:-

The Sessions Judge,Kanara Karwar. ---- Referror.

versus

Mr.V.D.Yennemadi,Pleader Karwar; ----Opponent.

Being Civil Reference No.5 of 1954.

The Government Pleader for the Referror;

Mr.D.V.Patel,Advocate for the Opponent.

Coram:-Chagla,C J. and Dixit,J.

For the reasons stated in the accompanying judgment the Court passes no order on the reference.

6-4-1954. Sd/-V.R.Gadkari.

Deputy Registrar.

Bill of Costs in the High Court.

By the Referror;	Rs.As.Ps.
Stamps for Vakalatnama (G.P.appears)	0- 0- 0
Advocate's Fee	45- 0- 0
Sur charge	11- 4- 0
Total Rs:	56- 4- 0

By the Opponent	Rs.As.Ps.
Stamps for Vakalatnama	2- 8- 0
Advocate's Fee	45- 0- 0
Sur charge	11- 4- 0
Total Rs:	58-12- 0

(Seal)

Sd/-V.R.Gadkari.

Deputy Registrar.

The 6th day of April 1954.

True copy

for Deputy Registrar.

The 7th day of May 1954.

1056.

Typed by Mr.S.M.Satghare.

Examined by Mr.P.J.Vyas

Read by Mr. P.V.Pendharkar

Rs.As.Ps.Fls.8.

Copying and comparing charges: 3- 0- 0

Paper charges: 0- 0- 6

Total Rs: 3- 0- 6

Rupees three and pies six only.

Superintendent, Decree Department.
12-5-1954.

Copy applied for on 9-4-54
Copy ready on 12-5-54
Copy delivered on 26-5-54
~~Sent by~~ V.P.P. ~~Regd. Post~~ ~~on~~

Assistant Superintendent.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

Criminal Appeal No. 5 of 1954.

(Under the Court's Discretionary Jurisdiction).

The State of Bombay. ... ... Applicant.

Versus.

V.D.Kolhapuri. ... ... Opponent.

Reference made by the Sessions Judge at Kalyan (Shri V.G.Bhat Additional Sessions Judge, Kalyan) for taking action against the opponent under Section 11 of the Bombay District Police Act 22 of 1890.

The Government Pleader for the Applicant.

Mr. D.V.Rajadhyaksha, Advocate for the Opponent.

Coram:- Chagla C.J. & Dixit, J.

8th April 1954.

Oral Judgment: (Per Chagla C.J.)-

Mr. V.D.Kolhapuri, who is a pleader practising in District Court at Kalyan, has been convicted for an offence under Sec. 85(2), (2) of the Bombay Prohibition Act and has been sentenced to two months' simple imprisonment and to pay a fine of Rs. ...

The charge against Mr. Yennemadi was that on two occasions, on the 20th October 1952 and on the 12th December 1952, he had taken alchol and was guilty of rowdy conduct and disorderly behaviour. Against his conviction Mr. Yennemadi appealed to the Sessions Judge, Kanara and the Sessions Judge confirmed the conviction and the order of sentence. He refused to enhance the sentence although an application to that effect was made by the Public Prosecutor. After the learned Sessions Judge dismissed the appeal he forwarded the papers to us by reason of Criminal Circular No. 103 (3), and the reason for submitting the papers to us is to enable us to consider whether under sec. 24 of the Pleaders Act we should take any action against the pleader . Sec. 24 provides:

" The High Court may suspend or remove from practice a pleader who has been convicted by any criminal court in India of a criminal offence implying a defect in his character which in the opinion of the High Court ~~renders him~~ renders him unfit to be a pleader."

Now, the section makes it clear that it is not merely a conviction which will give jurisdiction to the High Court to take action under this section. What is necessary is not only a conviction, but it must be a conviction with regard to an offence which implies a defect in the character of the pleader, and the defect in the character must be such as to render him unfit to be a pleader.

Now, the question we have to consider is that if a pleader takes alchol against the law, becomes rowdy and acts in a disorderly manner, is that conduct such as to display or reveal a defect in his character which would render him unfit to be a pleader ? The learned Sessions Judge has pointed out that the Pleader comes from a very good family and that he is a son of a retired District Judge but unfortunately the fates have not treated him too well. He had a miserable married life , his wife having left him soon after marriage. After that he became desperate and in order to drawn his worries and miseries he took to drink. Far from his conduct calling for a censure on our part which would take the shape of his being suspended or

19-7-91

removed from practice, we feel that this is a case where some sympathy should be shown to the pleader concerned. It is the duty of every citizen and no less of that of a pleader to obey the law, and if the law of the land says that "you will not drink except under conditions and circumstances laid down in the Prohibition Act, then the duty of every citizen is to obey that law. But for disobeying the law and committing a breach of the law, Mr. Yennecadi has been sentenced to a fairly severe sentence, viz. two months'simple imprisonment. To a man in his peition the sentence of two months' simple imprisonment is a very severe sentence. Therefore the majesty of the law has been vindicated and Mr. Yennemadi has paid the penalty for breaking the law. But we do not understand why, although the Government Pleader has pressed for it, we should proceed further under sec. 24 of the District Pleaders Act and should either suspend him or remove him from practice. What he has done has nothing whatever to do with his practice. Even a pleader is entitled to have a private life and what he does in his private life is the sole concern of the pleader himself. If in his private life he breaks the law, he must pay the pemalty as we already said. But unless his private life impinges upon his life as a pleader and affects his practice or his duty to the Court or to his clients, there is no reason why we should invoke our jurisdiction under sec. 24 and proceed against him. There is no suggestion that Mr. Yennemadi while he was drunk was discourteous to the Court or failed to discharge his duty towards his client. Under the circumstances we think no action is called for at our hands.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

No order on the reference.

By Order of the Court,

Sd/--V.R.Gadkari

Deputy Registrar.

True Copy

For Deputy Registrar

The 12th day of May 1954.

Misc Suits Kamala/53

G.C.P.—(J) J 160—80000—10-52
G.O., L.D., No. 1193 dated 7-12-15

[Spl.—Govt. Pl. H. C. Bom. 8 e

1953

1953

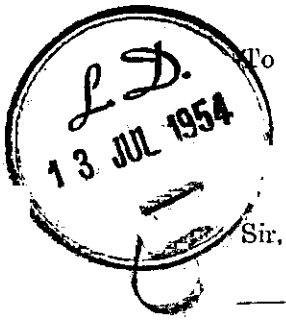
No. 5801

From

THE GOVERNMENT PLEADER, HIGH COURT,
BOMBAY;

To

The Secretary to Government, Legal Department, Bombay
The Collector of
The District Magistrate of



Bombay 12-7-1954.

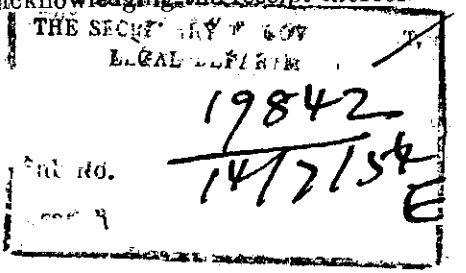
Sir,

With reference to your this office letter No. 15762/E, dated 25th July 1953, I have the honour to forward ~~return~~ herewith papers in the case as noted in the margin, and to request the favour of your acknowledging the receipt thereof.

Civil Reference

Appeal / Application No. 10 of 1953 (Dist. Kanara)

Certified copies of High Court Judgment and Decree.



Yours faithfully,

for Government Pleader, High Court.

Schreiben / Informacja

Folie ü Misc- Sąd Konsul/53

Vk.
23/7

SS

23/7

K.527. Rs.As.Ps.(Fs.2) Typed by Mr.P.J.Vyas. 1955

Copying and comparing charges. 0-12- 0
Paper charges. 0 -0 -3
Total Rs. 0-12- 3

Examined by Mr. 1955
Read by Mr.

Annas twelve and pies three only.

Superintendent,D.D.,
6-1-1954.

Copy applied for on 6-10-5
Copy ready on 6-1-54
Copy delivered on 8-1-54
Sent by V. P.
Regd. No. on

Assistant Superintendent.

In the High Court of Judicature at Bombay.

Order passed by the High Court in the case of:-

Subray Venkatraman Naik. .... Plaintiff-~~Reference~~.Appellant.

Versus.

Narayan Masti Patgar. ... .. Defendant- Respondent.

Being Civil Reference No.10 of ~~1954~~ 1953.

Mr. R.A.Jahagirdar with M/s. N.M. Shanbhag and V.M.Limaye, Advocates for the Plaintiff.- ~~Referor~~ Appellant
Mr. G.N. Vaidya, Advocate for the Defendant-Respondent.
~~Mr. R.A. Jahagirdar~~ The Advocate General with Mr. M.M.Desai & Mr.V.S.Desai, for the Government Pleader for the State.

...

Coram:- Chagla, C.J. & Dixit, J.

For the reasons stated in the judgment recorded in Special C.A.No.1480 of 1953, the court answers the two questions submitted to it as follows: (1) Section 6(2) is valid and (2) the notification is within the scope of Sectio 6(2).

Costs in the reference costs in the cause.

30-9-1953. Sd/. V.R. Gadkari.
Deputy Registrar.

....

True Copy.

for Deputy Registrar.

The 6th day of January 1954.

197

	Rs.as.ps.	
K.527. Copying & Comparing charges.	1-2-0	Fols.3.
Paper charges.	0-0-3	
Total Rs...	1-2-3	

Rupee One, annas two and pies three only.

Superintendent, D.D.
29-6-1954.

Typed by Mr.D.R.Gokarn
Examined by Mr. P.J.Vyas.
Read by Mr. D.T. Patwardhan.

Copy applied for on 6-10-53
Copy ready on 29-6-54
Copy delivered on 8-7-54
Sent by V.P.P. / Regd. Post on
Assistant [redacted]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Order passed by the High Court in the Case of :

The Civil Judge, Junior Division, Kumta.....Referor.

Subray Venkatraman Naik.....Plaintiff.

Versus.

Narayan Masti Patgar.....Defendant.

being Civil Reference No. 10 of 1953.

Mr. V. M. Limaye with Mr. R. A. Jahagirdar with Mr. N. M. Shanbhag, Advocates for the Plaintiff.

Mr. G. N. Vaidya, Advocate for the Defendant.
The Advocate General and Mr. M. M. Desai with Mr. V. S. Desai, Advocates for the Govt. Pleader for the State.

Coram: Chagla, C.J., & Dixit, J.

For the reasons stated in the judgment recorded in Spl C. A. No. 1480 of 1953, the Court answers the two questions submitted to it as follows : (1) Section 6(2) is valid, and (2) the notification is within the scope of section 6(2).

Costs in the reference costs in the cause.

30-9-1953.

Sd/- V. R. Gadkari
Deputy Registrar.

HIGH COURT ORIGINAL SIDE CERTIFIED COPY BOMBAY

198

Bill of costs in the High Court:

By the Referor:	Rs.as.ps.
Stamps for Vakalatnama. *G.P.appears.	*0-0-0
Advocate's Fee.	45-0-0
Surcharge.	11-4-0
Total Rs.	56-4-0

Abw 19-7-54

By the Plaintiff:	
Stamps for Vakalatnama.	2-8-0
Advocate's Fee.	45-0-0
Surcharge.	11-4-0
Total Rs..	58-12-0

By the Defendant :	
Stamps for Vakalatnama.	2-8-0
Advocate's Fee.	45-0-0
Surcharge.	11-4-0
Total Rs..	58-12-0

(Seal) Sd/- V. R. Gadkari

Deputy Registrar

The 30th day of September 1953.

True Copy

29/6/54

For Deputy Registrar

The 29th day of June 1954.

Misc. Suits Kumara 153

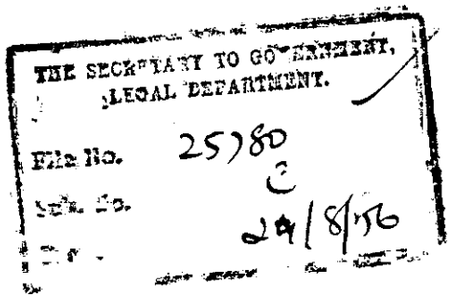
23/7/54

Ms Suit / Kanara / 53

No. 9395

Office of the
Government Pleader, High Court,
Bombay, d/- 20th August 1956.

The Charity Commissioner,
Bombay.



Sub: First Appeal No.509/1952.
Shri Sode Vadiraj Math
Vs.
Registrar of Public Trust
for the Dist. of North Kanara.
...

Sir,

With reference to your letter No. 674 of 1953 dated 6th February 1953 on the subject noted above, I have the honour to inform you that the above First Appeal came up for final hearing before the Hon'ble High Court, Bombay on 24th July 1956 and the following order was passed:

Coram: Chainani, J.

" Appeal dismissed with costs. "

24th July 1956.

Yours faithfully,

V Kanitkar

For Government Pleader, High Court.

No. 9396

C. f.w.c's to the Remembrancer of Legal Affairs, Bombay, with reference to his letter No. 2616/E dated 9th February 1953.

Sentencia Interlocutoria

Folio 111 Misc. Civil

Kanasín/53

24/6

Sol (M.) amplíe poderes?

30-8

Resolución

Se provee Referente

53 al 82 Folio 111 Misc. Civil

Kanasín/53

5/9 Sol (M.)